ARCHEION,

OR,

A DISCOVRSE

Vpon the High Courts

OF

IVSTICE

IN

ENGLAND:

Composed by *William Lambard*, of *Lincolnes Inne*, Gent.

Newly Corrected, and enlarged according to the *Authors* Copie.

Omnia judicia, aut detrahendarum controversiarum: aut puniendorum maleficiorum causa reperta sunt, Cic.

LONDON,

Printed by *E. P.* for *Henry Seile*, dwelling at the Tygers-head in St. *Pauls Church-yard*. 1635.

47.

In a folio volume N.° [illegible] of the manuscripts belonging to Lincolns Inn Library, & amongst my manuscripts there is a piece by Lambarde on the Chancery Court & more copious than that part of this volume which relates to the Chancery.

T. H.

FH

MVSEVM
BRITANNICVM

THE AVTHORS EPISTLE.

Dedicated to the Right Honorable Sir *Robert Cecil*, Knight, one of her Majesties *most Honourable Privie* COVNCELL.

ALbeit, right Honorable Sir; that my bounden Dutie towards you, aſwell for the ſingular favour of my moſt Honorable Lord your Father, continu-

ally extended upon me, as al-
ſo for that cheerefull Re-
gard *which it hath pleaſed*
your Selfe to vouchſafe un-
to me, might have moved me
with the firſt, to gratulate
unto You, that Honourable
place wherunto you are right
worthily advanced: Yet that
I may not onely bewray my
ioy thereof in vaniſhing
words, but teſtifie it alſo
with ſome more ſtading Me-
moriall *that might remain:*
I have purpoſely ſpared to
ſee your Honour, untill that

I might come accompanied with this Copie of mine Archeion, *or* Commentaries of the Courts of England; *Whereof, ſome I penned ſundrie yeeres ſithence, others not long agoe, and the reſt ſo lately, that your Honour may, if it pleaſe you, take the firſt view and reading of them; wherein if you ſhall finde either pleaſure or profit, then ſhall I alſo both enioy the deſire of my heart, and the expected fruit of my Travaile. And thus heartily*

praying God *to increaſe your Honor with your yeers, that as you bee already by Nature the Sonne; ſo you may at the length by imitation become the very* Heire *of that renowned* Neſtor, *and onely* Atlas *of the* Engliſh *Countrie and Commonwealth. I humbly pray you to pardon the eſcapes both of me and this Writer. From* Lincolnes Inne *this* 22. *of* October, 1591.

Your Honors to command,

Wil. Lanbard.

To the Reader.

Corruptio unius eſt generatio alterius.

FOR had not this late *aſperſion* trenched too much upon the *pietie* I owe to ſo worthie an *Anceſtor* (as I dare ſay) the *Kingdome* would acknowledge; truly I ſhould not have given my leaſt *aſſent* to have advanced this to light,

(which

(which too lately was, without my privitie, or liking.) But the crying *Errors* (ariſing from the *untimely publication*) call upon me, to *vindicate* him from that *wrong* (if any ſuch can be) and my ſelfe from an imputed *Apathie*. But why doe I call them *wrongs*, and *aſperſions*? ſince that ſweet *Odour* hee hath left, cannot by their falſe *ingredients* be ſo *ſophiſticated*, but may by the *judicious* bee eaſily ſmelt out. And for thoſe that delight meerely in *ſuperficials*, neither weighing the *ſenſe*, or *defects*, but ſwallow the *Errours* for *Erratas*; ſuch as theſe it hath alrea-

alreadie passed. Others are to be expected, of meere *active soules*; and of these, some that will passe *sentence* (upon the Booke) before it come to *judgement*: I shall *assigne* them the *Character*, heeretofore occasioned upon this verie *Worke*;

Fooles will contend,
without the cause discerning,
And argue most,
of what they have no learning.

I have too much digressed: seeing my *desires* are to be *repaired*, for *injuries* past; not to labour to prevent I know

not

not what, to come: Grant me the *first*, and I ſhall *appeale* the *other* to thy *judgement*; and thinke, I have well tendred my *dutie* I owe to my *Parents*, and *Countrey*.

T. L.

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ARCHEION;

OR,

The High Courts of *Iuſtice* in *England.*

Contention hath beene from the beginning.

AS there is no doubt, but that continually, even from the firſt propagation of Mankinde upon the Face of the Earth, there hath been before the Floud, *Cain*, *Cainiſts*, and proud *Gyants*; and after the Floud, *Cham*, *Nimrod*, *Eſau*, and ſuch others, migh-

tie hunters, and injurious oppreſſors of the ſervants of God: So it is not to be thought, but from time to time, even ſithence alſo God hath of his fatherly care and mercifull providence, alwayes ſtirred up ſome of his owne, whom hee hath endowed, and armed with ſufficient *Wiſdome*, *Authoritie*, and *Power*, not onely to preſerve his little ones from the greedie jawes of ſuch ravenous perſecutors; but alſo after ſome ſort to reſiſt their furie, and to chaſtiſe them for their exceſſe and outrage. And hereof it was, that whileſt all the world conſiſted of a few Houſeholders, the Elder (or Father of the Family) exerciſed authoritie over his *Meyney*, and did diſtribute Reward and Paine amongſt them after his owne diſcretion, according as the old Poet ſaith,

Iura dant ſinguli natis & uxoribus.

The

The beginning of Kingdomes.

BVt after ſuch time as by Multiplication of *Families* and *Hamlets*, naturall Love was ſomewhat more cooled, as being derived, and drawne further from the Fountain: And after ſuch time alſo, as greedineſſe of enjoying the fat of the Land had moved debate and diſſention, ſometimes from the Limits of grounds (whereof the word *Lis* tooke the name) ſometime for the uſe of a *River* or *Water* that ran betweene the poſſeſſions of two men, (whereof alſo ſuch *Contenders* were called *Rivales*) and ſometimes for ſome other cauſes; but yet ſo, that alwayes the mightier, and more miſchievous, did (as Bulls in the *Heard*) gore and grieve the weaker and better ſort. Then fled men (as *Cicero* conjecturth) to ſome one

among them, excelling others in *Vertue*, and ſubmitted themſelves unto him, praying that hee would by *equity* ſave them from *injury*, and maintaine both the *mightieſt* and the *meaneſt* in one indifferencie of *right* and *juſtice*. And truly, ſo long as they found this at his hand, they tooke for *Law* whatſoever hee pronounced, and they obeyed (as an Oracle) whatſoever was commanded by him.

The beginning of Lawes.

BVt when as (at the length) hee alſo either did convert to his ſingular gaine, that Authority which was given unto him for the common benefit of others, or elſe dealt not a like meaſure unto all; but abandoning *Iuſtice*, made *Luſt* his *Iudge*, and *Might* his *Miniſter*; then forthwith alteration of the former eſtate

eſtate followed, and then were *lawes* and *rules* of *Iuſtice* deviſed, within the which (as within certaine *Limits*) the power of *Governors* ſhould from henceforth be bounded, and which ſhould have but one *tongue* and *voyce*, wherewith to ſpeake to all ſorts of Suiters.

Iura inventa metu iniuſti, fateare neceſſe eſt. Horat.

The beginning of Courts of Iuſtice.

AGaine, after all this alſo, when not only the multitude of men was growne infinite; but wickedneſſe alſo was much increaſed with the time: and conſequently *contentions* waxed ſo many in number, and manifold in matter, as neither any one perſon was found able to determine the *Suits*, nor any one place ſufficed to containe the *Suitors*: Then accordingly (as *Iethro* adviſed *Moſes*) the *Iuriſdiction* (or *chardge* of adminiſtring *Iuſtice*) was firſt

broken into parts, the *hearing* of *cauſes* was divided amongſt many perſons, and ſundry *places* were appointed to that ſpeciall end, and ſervice. Whereof it came to paſſe, that the *Iſraelites* (which were the firſt people of the world, to whom any *written Law* was given) did pronounce their *Iudgements* in the Gates of every Citie, to the end, that both all men might behold the indifferencie of their proceedings, and that no man ſhould need to goe out of his way to ſeeke *Iuſtice*.

The old *Romans* firſt within their *Temples*, of purpoſe to ſhew that *Iudgement* was a *Divine thing*; then afterward in *Curia & Foro*. The *Athenians* alſo, and their *Temple* called (by reaſon of a ſpeciall judgement) *Areopagus*, and in the places called *Palladium* and *Pritaneum*: And albeit that the *Gauls* (our Neigh-

Neighbours, that bee now called *Frenchmen)* did hold their Aſſemblies for *Iuſtice* only at *Carnute* or *Chartres*, a place ſo ſituate in the middeſt of their Countrie, that all the people might have indifferent reſort thereunto: After which order alſo the *Britans* of this *Iland* did make their like meetings as it might be well gathered out of *Cæſars Commentaries*, where he plainly writeth, that thoſe *Druydes* (which then were the *Iudges* amongſt the *Gauls*) had fetched that their manner of *Diſcipline* out of *Britaine*, where wee now dwell: Yet nevertheleſſe, the *Saxons*, our Anceſtors, (which ſucceeded them in this Countrie) they (I ſay) retained the manner of the old *Germans*, their owne Elders, who (as *Tacitus* writeth) *Iura per pagos vicoſque reddebant*; and they made diſtribution of *Iuſtice*, not onely in one Towne,

or in the Princes *Palace*, but alſo at ſundry other ſpeciall places within the Countrie.

And truly, the *Normans* (that invaded the poſteritie of the ſame *Saxons* here) did not ſo much alter the ſubſtance, as the name of the *Saxons* order, which they found at their comming hither.

Of Courts. For (in effect) they did but change the word *Gemot*, which in the *Saxon tongue* ſignified an *Aſſembly* (or *Meeting*) into the *French* word *Court*, or *Cour*; (for ſo it is alſo found written) being a terme of the ſelfe-ſame force and ſignification.

What a Court ſignifieth.

THis *Court*, or *Cour*, therefore is derived of the *Latine Curia*; which alſo is fetched from *Cura*, (as *Valla* writeth) whereby it is notified, that heed and care ought to be taken

taken in the deciding of Controverſies.

It ſignifieth properly both the Aſſembly of men for the hearing of Cauſes in variance, and the place alſo where the Aſſembly is made: According to the firſt of which ſignifications, the *Saxons* (as I ſaid) called it * *Gemot*, a *meeting*, of *Gemettan*, to *meet*: and agreeable to the ſecond, the Kings houſe was firſt called a *Court*, becauſe the chiefe *Court* of *Iuſtice* was holden there.

* Which ſignifieth a meeting (*ad exercitationes Legis congreſſus*) from whence we have the word *Moote*.

The Diviſion of Courts.

BVt now of *Courts*, ſome may be called *Eccleſiaſticall*, ſome, *Lay*; and otherſome, mixed, (that is to ſay) both *Eccleſiaſticall* and *Lay*.

Eccleſiaſticall Courts, what they be.

ECcleſiaſticall *Courts* be many in number, and divers in nature; where-

the Convocation whereof the greateſt, is the *Convocation* of all the *Archbiſhops, Biſhops* and whole Clergy of both the *Provinces* of *Canterburie* and *Yorke*; the which is alwayes ſummoned by the Kings Writ, and which can doe nothing without the *Royall aſſent* firſt had and obtained.

13. *Eliz.* cap. 12. 24. *H.* 8. cap. 12.

And ſo the ſpirituall Prelats of the upper Houſe being aſſembled by the Queenes Writ in the Convocation, *might after appeale made unto them determine of matter touching the Queene.*

the two Provinciall Synodes of Canterbury & York The next to thoſe, be the two *Provinciall Synodes* of *Canterburie* and *Yorke*: to the latter of the which, there are onely three *Biſhoprickes* ſubject; that is to ſay, *Durham, Carlile*, and *Cheſter*: all the reſidue owing their *obedience* to the *Sea* of *Canterburie*.

Co.t of High Comm.r Then follow the *Court* of the *High Commiſſioners*, in Cauſes of *Religion*

and

and the *Court* of *Delegates*; to the which there lyeth *Appeale*, from ſentence given in the *Arches*.

After theſe, be the generall *Courts* of the *Archbiſhop* of *Canterburie*; that is to ſay, the *Conſiſtorie*, (or *Court of Arches*) as well for *Appellations*, as for matters of the firſt inſtance.

The *Court* of *Audience*, (or the *Chancelors Court*) which was wont to bee holden in the *Archbiſhops* Houſe.

The *Commiſſaries* (or the *Prerogative*) *Court*, for *Probats* of *Teſtaments*; and the *Court* of *Faculties*, for *Diſpenſations*: if at the leaſt, that may be called a *Court*, which holdeth no Plea of controverſie.

Laſtly, the ſpeciall *Courts* of this *Archbiſhop*, namely, the *Conſiſtorie*, holden by his *Commiſſarie* at *Canterbury*, for his owne Dioceſſe; his *Archdeacons Court*, and the *Court* of thoſe peculiar *Deaneries*, which doe belong

belong to him, and doe lye in th
Dioceſſe of other *Biſhops*.

The other *Archbiſhop* (and eac
other *Biſhop* alſo) hath in his Dio
ceſſe the *Court* of his *Chancelor*, an
the *Court* of his *Archdeacon*, or Of
ciall.

But for as much as the deſcripti
on of theſe *Eccleſiaſticall Courts* pe
taineth to another Learning,
meane to the *Civill* and *Canon* Law
(by which they be governed;) an
for that they doe not peculiarly (a
the reſt) belong to our Nation, an
may withall require a ſeverall Trea
tiſe by themſelves; I will at thi
time content my ſelfe with thi
bare enumeration of them, as ben
ding my labour chiefely to the di
coverie of the *Lay* or *Tempora*
Courts that had, or now have plac
amongſt us.

La

Lay Courts of two ſorts in ancient time.

Lay Courts were at firſt of two ſorts onely, *Baſe* and *High*: Concerning the beginning whereof, I read, that even as *Moſes* (the ſpeciall Miniſter of *Iuſtice* appointed by God, finding himſelfe unable to ſuſtaine the burthen of deciding all controverſies of the people) did ſet *Iudges* over *Tribes*, *Hundreths*, *Fifties*, and *Tenths* of the multitude; to whom he referred the determination of ſmaller cauſes; reſerving to himſelfe the knowledge of matters that were of greater importance.

The firſt diviſion of this Realme, for Iuriſdiction.

SO alſo the *Saxon*, (but Chriſtian King of *England*) *Alfred*, divided this

this whole Realme firſt into *Shires*, then thoſe *Shires* into *Lathes*, *Rapes*, or *Ridings*, and thoſe againe into *Wapentakes*, or *Hundreds*; and laſtly thoſe alſo into *Leets*, *Boroughs*, or *Tythings*: and did withall eſtabliſh *Juriſdiction* in every of theſe, permitting to the *Reeves* (or *Iudges* of the lower Roomes) Authoritie of hearing ſmaller Suits, granting greater power to the *Sheriffe*, and *Aldermen*, which had charge of greater Aſſemblies, and retayning to himſelf the deciſion of ſuch matters, as by juſt cauſe of Appellation, either for *Law*, or *Equitie*, ſhould be brought unto him.

Ingulf. Croy. land, 12. H. 7 37. b. Fineux

Shire-Mote, or *Shire-Court*.

The Court of the whole *Shire* was of two ſorts: whereof the firſt then called *Scyregemote*, that is, the Aſſemblie of the *Shire* (and now termed the *Sheriffes-turne*) was then (as now alſo) holden twice a yeare.

And this *Court* was of like *Juriſ-*

diction

dition to the *Court* of the *Leet*, or of the *Burroughs* or *Tythings*, as it was then called.

The ſecond and the *Hundred Court*, then named *Hundreſmote*, was in thoſe dayes appointed to bee holden once in a month at the leaſt, and that was of like nature to the *Countie-Court*, (which is now kept once every moneth alſo:) And to the Court *Baron*, anciently called *Heal-gemot*, and corruptly *Haylemot*, that is, (as I ſaid) the Court of the *Hall*, *Mannor*, or chiefe place which is now at this day to bee kept, and maintained once in three weekes, if the Lord will ſo have, and uſe it.. *Hundred Court.* *Court Baron.*

I read further in the Lawes of the *Saxon* King *Edgar* thus, *Negeſecenam man won Cyng rot &c.* **Let no man ſeeke to the King in matter of Variance, unleſſe he cannot find right at home: but if that righe be too heavie for him, then let him** *Sax. Lawes, Cap. 2. f. 79.*

him seeke to the King, to have t lightned.

The very like whereof, in effect, is to be seene in the Lawes of *Canutus* the *Dane*, sometime King of this *Realme* also: Out of which Law, I gather foure things.

1 First, That every man had meanes to sue in those *base Courts* at home in the Countrey, for the recoverie of his right.

2. Then, that no man ought to sue out of the Countrey, or to draw his *Plea* from thence, without good cause; both which things doe lye plainely in the Letter of this *Law*.

3. Thirdly, that the *King* himselfe had a *High Court* of *Iustice*, wherein, it seemeth, that he sate in person: For the words be, *Let him not seeke to the King*.

4. And lastly, that the same *Court* of the *King* did judge not onely according to meere *Right*, and

Law, but alſo after *Equitie* and good *Conſcience*.

For firſt the words be, (*Vnleſſe he cannot finde right at home:*) by which it is permitted, that then hee might ſue to the *King* for *right*. Againe, the words ſtand thus; *If that Right be too heavie, then let him ſeeke to the King, &c.* whereby it is meant, that hee ſhould have the *rigour* of the *Law* mitigated by the *conſcience* of the *Prince*. And after this order, and in thoſe two ſorts of *Courts* was all *Iuſtice* adminiſtred, untill the time of *King William* the *Conqueror*: During whoſe Reigne (as alſo under the Government of *King Rufus*, his Sonne) it is to be thought, that the ordinarie courſe of *Iuſtice* was greatly diſturbed, as well by reaſon of the inteſtine and forraine *Warres*, as alſo becauſe that theſe two *Princes* governed by a meere and abſolute

power, as in a Realme obtained by *Conqueſt*.

But yet it was ſo farre off, that any of them did utterly aboliſh theſe *Courts*, that the ſame did not only remaine during all their times (howſoever put to ſilence for a ſeaſon;) but alſo had continuance afterwards, and doe yet (as they may) beare life amongſt us.

For (as I ſaid) thoſe *baſe Courts* of the *Shires*, *Hundreds*, *Burroughes*, and *Mannors*, doe yet remaine (in a manner) the ſame in ſubſtance that they then were. And that the *Pleas* ought no more to be taken from them now in our dayes (without cauſe) than they ought then to have beene, may evidently be proved by the *writs* of *Folt Pone*, *Accedas ad Curiam*, and *Recordare*, which wee now yet uſe; and that to this onely end, to remove *Suits* (upon cauſe) out of one *Court* into another.

Writ of Folt Pone, accedas ad cur. & recordare

The

The Kings Bench.

THe like I may alſo affirme of that *High Court*, which then followed the *King* himſelfe; and is thereof, till this day, called the *Bench* of the *King*. For albeit that many peculiar *High Courts* be now, ſithence that time, advanced, by reaſon that the multitude of *Suits* ſtill encreaſing with the iniquitie and age of the *world*, would not ſuffer them all to be ordered in one place, without both intollerable delay of matters, and great vexation of men: Yet nevertheleſſe, if you will throughly behold the matter and ſubject about which all theſe *Courts* are now occupied, you ſhal perceive, that they are but, as it were, ſo many branches ſprung out of that one Tree, or ſtreames derived from the ſame Spring and Fountaine.

The High Court of *Juſtice* before the Conqueſt for *Law* and *Equity*.

Pye Powders, of *Pyes* feet, and *Powlders* duſtie, becauſe it is for Travellers to the Faire.

For letting paſſe thoſe Courts of the Countrie, which I have already touched; and alſo thoſe other ſmall Courts of *Record*, that be in Cities and Townes corporate; yea, and the *Pye-Powders* Court it ſelfe, that laſteth no longer than the *Faire*; I ſay, that all our Higher Courts at this day, be either Courts of *Right* and *Law*, or elſe of *Equitie* and *Conſcience*, as they then were; although they now require another ſubdiviſion than they then had, and that if you will, may be this.

The Diviſion of meere Lay Courts at this day.

THe Courts of *Law* doe either hold *civill*, or *criminall* Cauſes (more anciently tearmed *Common Pleas*, and *Pleas* of the *Crowne*) and theſe *civill* Cauſes be either moved betweene the *Prince* himſelfe, and his

his *Tenants* and *Subjects*; or elſe betweene *Subjects* themſelves; and that either of our own *Realme* only, or of it, and another *Realme*.

Thoſe Courts of *Law* that hold *Plea* of *common*, or *civill* matters growing betweene the *King*, or the *Prince*, and his *Subjects*, be theſe: The *Exchequer*, deviſed for the ſafe cuſtodie of the *Crowne-lands*, and for the faithfull anſwering of the *Revenues* of the ſame. The Court of *Wards* and *Liveries*, the Court of the *Dutchy* of *Lancaſter*, and the *Chancery* Court, at the leaſt ſo farre forth as the ſame hath to doe with *Petitions*, *Travers juram. de droit*, and ſuch like cauſes.

Thoſe other Courts of *Law*, that have *Juriſdiction* of *civill* or *common Pleas*, ariſing betweene our owne *Subjects*, be theſe:

The *Common Pleas*, or *Bench*; the *Marſhalſey*, for matters within

the *Verge*, or limits assigned to the Kings House, or Palace.

The *Admiralty Court* for *marine* causes, and the *Kings Bench*, so farre forth as it doth retaine *jurisdiction* in matters of *Debt*, *Assumption*, *Actions* upon the *case*, and such other things more properly tryable in the *Common place*, than here; and these be the Courts of meere Law, that have ordinary resort and limited Iurisdiction.

The Courts of absolute *conscience* for *civill* Causes, be these: The *Chancerie* open to all men: The Court of *Requests*, that specially heareth the Suits of poore men, and of the Princes servants.

The *Chancellors* Court within the *Exchequer*, and the two Councells establisht the one in *Wales*, the other in the *North-countrey*, both consisting of *President* and *Counsell*, like unto those which in *France* are

are commonly called *Parliaments*.

Criminall Causes belong yet ſtill either generally to the *Kings Bench*; or ſpecially to the Court of *Star-chamber*; or elſe particularly to the *Conſtables* Court, to the *Marſhalſey*, *Admiraltie*, *Gaol-deliverie*, *Oyer* and *Terminer*, and *Seſſions of Peace* for our owne Subjects, or to the *Wardens* Courts in the *Marches*, for cauſes of that kind between us and the *Scots*.

The order of this diſcourſe of *Lay Courts*.

But now, to the end that it may the more evidently appear, how, and by what degrees of encreaſe theſe many Courts have ſprung out of that one, it is requiſit that I proceed in the Hiſtory of King *William* the Conqueror, where I left, and deſcend from him downward, untill I have ſet them all on foot, ſome in the order which I have laid, and ſome Hiſtorically, as the time it ſelfe begat them.

The Court of Exchequer.

IT is confeſſed by all Writers, that the *Conquerour* (after ſuch time as he had ſuppreſſed the forces of thoſe that made head againſt him here) did immediately cauſe the whole *Realme* to be exactly ſurveyed by *Shires* and *Hundreds* ſeverally; as well for the underſtanding of Woods, Paſtures, Meadowes, and Tillages thereof, as alſo for the profit of Churches, Mills, Villains, and of all other commodities whatſoever. The Record of which Survey was then called *Doomeſ-day Book*, and was appointed to be kept in the *Exchequer* at *Weſtminſter*; where it now reſteth.

Doomesday Book

And that *Court* alſo did he then newly erect for the order of his *Revenues*, after the name of his *Exchequer* in *Normandie*, though in the manner

manner thereof it differed not a little from it: For the *Exchequer* of *Normandie* had not onely the government of the *Revenues* of the *Duke* there, but was also the Soveraigne *Court* for administration of *Iustice* among his subjects; and so continued, untill that *Lewis* the twelfth, King of *France*, in the yeare after *Christ*, 1499. converted it into a *Court* of *Parliament*, consisting of President and Counsellors, and established it at *Roan* in *Normandie*, where it now remaineth.

But this his *Exchequer* in *England* had onely the direction of his *Demesnes* and *Receipts*; the administration of common *Iustice* continuing still in that other *High Court* of his, as it was before his comming hither.

For proofe of which matter, I call to witnesse *Gervasius Tilburiensis*, a learned man, that lived so neere to

the

the time of the *Conqueſt*, that he co
feſſed that he had conference wi
Henry the Biſhop of *Winchest*
which was ſonne to the *Conquero*
owne Siſter.

This man was an *Officer* of t
Exchequer here, and penned ſpeci
Dialogues of the *Obſervations* of t
Exchequer, which hee dedicated
King *Henry* the ſecond, and be
remaining in the *Receipt*, under t
cuſtodie of the *Chamberlaines* of t
Exchequer, in the *Blacke booke* the
In the firſt part of which his *Di*
logues, and the firſt *Chapter*, hee w
teth (for the *antiquitie* of the *E*
chequer) that it was brought out
Normandie by the *Conquerour*; a
for the *authoritie* of that *Court*, h
hath (amongſt other words) the
following: *Nulli licet Statuta Sc*
tarii infringere, vel eis quavis teme
tate reſiſtere; habet enim hoc comm
cum ipſa Domini Regis Curia, in

ipſe in propria perſona Iura decernit, quod nec Recordationi nec Sententiæ in eo latæ liceat alicui contradicere. Whereby it is plainely proved, that the *Court* of the *Exchequer* was at that time a diſtinct *Court* from that *Court* of the *King*; in the which he himſelfe ſometimes, and commonly his *Iuſtice* (called then *Prima Iuſtitia*) did uſe to ſit: The one *Court* having authoritie over the Kings *Demeaſnes* and *Receipts*, as *Gervaſius* (in all that Worke) at large diſcourſeth; and the other uſing the power of diſtributing common *Iuſtice*, as his words in this place, doe ſufficiently purport.

And therefore I cannot but (here by the way) note the error of them which doe maintaine, that the *Exchequer* was (in this time of King *Henry* the ſecond) a *Court* of whatſoever *Common Pleas* for all ſubjects what-

Commentar. f. 208. *Sand.*

whatſoever, and which (for proo
of their Aſſertion) doe alledge t
Title of Maſter *Glanviles* Booke
part thus: *Et illas ſolum Leges c
tinet, & conſuetudines, ſecundum qu
Placitatur in Curia Regis ad Scacc
rium.*

For overthrow whereof, firſt
ſay, that the words of the Title be
not the words of *Glanvile* himſelf
but of that man (whatſoever he
were) that publiſhed his Book i
Print; for hee intituleth his Boo
thus:

*Tractatus de legibus de tempore Regi
Henrici ſecundi, compoſitus illuſtri vi
Ranulpho de Glanvillo juris regni, &
antiquarum conſuetudinum eo tempo
peritiſſimo*: which doth plainly be
wray that he ſpake of *Glanvile* as o
another man, and which alſo live
not then, but at another time.

Secondly, I affirme, that if i
were the ſpeech of *Glanvile* himſelf

yet if you will take the reſt of his words with you, you ſhall ſee that they have another meaning: for the words ſtand together, *Secundum quas placitatur in Curia Regis ad Scaccarium, & coram Iuſtitiis ubicunq; fuerint*: ſo that if you read them with the point *Comma* next after the word *Regis*, then they will yeeld you three Courts, that is to ſay, the *Exchequer*, the Kings Court (or *Bench*) or the Court of the Iuſtices at large: But if they be taken without any ſuch point, yet the words, *Coram Iuſticiariis ubicunq; fuerint*, doe ſet forth that other Court of the King, whereof I doe now entreat.

Laſtly, I undertake to ſhew you, not by the *Title*, but by the *Text* of *Glanviles* owne Booke; that in his time the Kings Court was one, and the *Exchequer* was another: For throughout his whole Worke, hee

calleth

calleth the Court of *Common Plea* *Curiam Domini Regis*, and the Stil of the *writs* thereof is, *Quod sit a* *ram me vel Iusticiariis meis*; bu when he commeth to speake of th *Exchequer*, he talketh of Accomp to be made to the King there, an of none other matter; as nameh in the 7. Booke and 10. Chapte where he hath this, *Si Dominus Re* *aliquam Custodiam alicui commiseri* *tunc distinguitur, utrum ei custodia* *pleno jure commiserit: Ita quod nullu* *inde reddere computum oportet ad Scu* *carium aut aliter.*

The first beginning of Iustices in Eyre.

Math. Par. Ann. 1176. BVt before that I leave this Kin *Henry* the second, I must add this also; That he in the three an twentieth yeer of his Reign, di (by the advice of his Son and B

shop

ops) cut the Realme into ſixe parts, and to every of thoſe parts appointed three *Iuſtices*, which by *Henry Bracton* are called *Itinerantes*: And in *Brittons* Booke *Iuſtices in Eyre, quaſi errantes*, (as *Gervaſe* of *Tilbury* expoundeth it) in reſpect (as it ſeemeth) of thoſe other which were firſt called *Reſidentes, Sedentes*, and afterwards *de Banco*, for the reaſon of their certaine ſitting without remove.

The proper names of which *Iuſtices* are ſet downe by *Roger Hoveden*, who alſo deſcribeth their circuits, not to differ much from the ſame that our *Iuſtices* of *Aſſize* doe now ride: and theſe *Iuſtices* held Plea as well of *criminall* as of *civill* ſuits, and ſo continued till the beginning of the Reigne of King *Edward* the third, by which time their Authoritie was by little and little weakned, partly by a former advancing

at the beginning of Edw. 2. & 3. reign Seſſions in Eyre ceaſt.

cing of certaine new *Iuſtices*, calle
of *Aſſize*; becauſe their firſt Offic
was, to take *Aſſizes* of *Mortdanceſt*
and of *Novel diſſeiſin* (which in th
cuſtomes of *Normandie*, from whic
it came, is called *La Novellette*) i
every Country: whereunto it wa
afterwards added, that they wit
others ſhould take *Attaints*, *I*
ries, and *Certificats*, and deliver th
Gaoles alſo; and partly by erec
ing of *VVardens* of the *Peace* (after
wards called *Iuſtices* of the *Peace*
to whom likewiſe Iuriſdiction o
ſundry ſorts was given, and com
mitted; ſo that about the begin
ning of the Reigne of King *Edwar*
the third, the Seſſions in Eyr di
altogether ceaſe, and take leave
And ſo I conclude, that not one
during all the time of the *Conquer*
himſelfe, of *William* his Sonne, an
of his other Sonne *Henry* (whic
was a peaceable Prince, and a main
taine

ner of ancient *Lawes*, and learned in them; whereof he had the name (*Beauclarke*) but alſo under the government of King *Stephen*, and of his *Henry* the ſecond, there was one *High Court* following the King, which was the place of ſoveraigne *Iuſtice* both for matter of *Law* and *Conſcience*; and one other ſtanding *Court*, which was governeſſe onely of the *Land* and *Revenues* of the Crowne. The firſt of which, was then called *Curia Domini Regis*, and *Aula Regia*; for that the Prince himſelfe did many times ſit in perſon there, and had *Iuſtices à latere ſuo reſidentes*, (as *Bracton* ſaith) namely, his chiefe *Iuſtice*, *Chancellor*, *Conſtable*, *Marſhall*, and others: for which reaſon, it is called the *Bench* of the *King* even to this day. The latter was then, as it is now, called *Scaccarium*, *eo quod lucibilis Scaccarii formam haberet*, if you will give faith

to *Gervaſe Tylburie*; or elſe it tooke the name of *Stattarium*, (as *Paulus Æmilius*, and after him *Polydor Virgil* doe write of it) or not unprobably was called *Exchequer*, of *Eſcheats*, becauſe it had the order of thoſe things which the *Civilians* doe call *Caduca*, and we *Eſcheats*. And in this the Prince ſate not perſonally at any time, but his chiefe *Iuſtice* as *Preſident*, and then the *Chancelour* of the *Exchequer*, the *Treaſurer*, and *Barons*.

The Court of Common Pleas.

IN this plight that *High Court* of the King continued, untill that *Henry* the third, in the ninth yeare of his reigne, (which was about the time in which he aſpired to the age of 21. yeares) finding by experience, that it was either chargeable or dilatorie, or both, for his ſubjects

to have no other remedie for tryall of their *rights*, but either before himſelfe, in that *Supreme Court*, (which removed with him whereſoever he went) or before thoſe *Iuſtices* in *Eyre* (which came not yearely into the Countrie) granted unto his ſubjects that *great Charter* of the Liberties of *England*; in the 11. *Chapter* whereof, he ordained thus: *Communia Placita non ſequantur Curiam noſtram, ſed teneantur in aliquo certo loco.* Whereupon followed two things: The firſt, that a new *Court* was erected for the determination of ſuch *Pleas* as did not concerne the *Crowne* and *Dignitie* of the *Prince*, but were meerely *Civill*, and did belong to the ſubjects betweene themſelves: The ſecond, that this *Court* was eſtabliſhed in a place certaine, and that was at *weſtminſter*; to the end, that the people might have a ſtanding Seat of *Iuſtice*,

whereunto they might resort, for the tryall of their owne *Causes*, and not be driven to follow the *King* and his *Court*, but onely where the matter respected him. And after this, all the Writs that are recited in *Henry Bractons* Booke, (which was written in the latter end of the reigne of this King *Henry* the third) have this *commandement* to the partie; *Quod sit coram Iusticiariis meis apud Westminster*, and not *Coram me vel Iusticiariis meis*, as the former forme in *Glanvile* was. And thus began that *Court*; which, because it hath power over *Common Pleas*, wee now call the *Common Pleas*.

Bractons Booke wrote the latter end of the reign of Hen: 3.

The division of the Courts by Britton.

ABout this time also, (or not long after) some other *Courts* of *Iustice* were likewise opened, as it

it may partly appeare by *Henry Bracton*, but more plainely by *Iohn Britton*, who followed immediatly after him.

For in the Reign of King *Edward* the first, this *Iohn Britton*, then Bishop of *Hereford* (whose name Master *Bale* in his *Centuries*, or his *Printer* mistaketh, and calleth *Becton*) being singularly learned in the Lawes of the Realme, (did) at the commandement of that King, in his name compile a Book, now imprinted, and named *Britton*, in the beginning whereof he parteth all Iurisdictions thus:

1 First, that the King himselfe hath soveraigne Iurisdiction above all others in his Realme, to judge of all causes whatsoever.

2 Secondly, that the * *Marshall* of the Kings House have the place of the King, to heare and determine *Pleas* of the Crowne within the

* *Marshal* of *Mars*, *Marshal* of *Mare* a Horse, and *Shalke* a Governour, that is, Master of the Horse.

Verge, and that the *Iuſtices in Eyre* have like Authoritie in every countrie once in ſeven yeeres.

3 Thirdly, that the Iuſtices ſhall follow the King whereſoever he goeth, and ſit in his place, have Connuzance of *erroneous Iudgements*, *Appeales*, and other matters concerning the Crowne.

4 Fourthly, that the *Coroner* of the Houſehold have his proper power within his *Verge*, and that he and others have the order of *Weight* and *Meaſure* throughout the Realme.

5 Then that *Sheriffes*, *Coroners*, *Hundreders*, *Burgeſſes*, *Serjeants*, and *Beadles*. have their Courts within every their particular limits.

6 Sixthly, that *Iuſtices* (being continually at *Weſtminſter*) have Authoritie concerning the Kings *Debts*, and *Fees*, and all things incident thereunto.

And

And laſtly, that other *Iuſtices* have the charge of *Aſſizes*, and of the deliverie of Gaoles in every *Countie*.

And foraſmuch as after this diſtribution of power thus made to hold Plea, ſome of theſe Courts would not containe themſelves within their appointed limits, but ſought to enlarge their Authoritie by uſurping Iuriſdiction that was appropriate to others, the ſame King did by Parliament (holden the 28. yeere of his Reigne) confirme the great Charter for ever, and in certaine Articles (as he called them) ſet forth upon the Charter, did then by like Authoritie of Parliament, enact, that they of the *Exchequer* ſhould not take knowledge of any *common Plea*; that the *Seneſchall, or *Steward*, and the *Marſhall* of the Kings Houſhold ſhould not hold Plea of Frank tenement, but

Cap. 3. 4. & 5.

**Seneſchall*, of *Sein*, a houſe, and *Schale*, a Governor: So *Steward* of *Stow*, a houſe, *Ward* a Keeper.

but content themselves with the hearing of *Trespasses*, *Contracts*, and *Covenants*, made within the *Verge*, and that the *Chancellor* and the *Iustices* of the *Kings Bench* should follow him whereſoever he went, to the end he might alwayes have men about him, that were able to deliver *Law* to ſuch as ſhould require it.

Hitherto as you ſee, there is no expreſſe mention in *Britton*, either of the Court of the *Admiraltie*, the *Conſtables* Court, or of the *Chancerie*. Therefore it remaineth yet, that wee labour to find out from whence they alſo fetched their beginning.

And that ſhall we the more eaſily doe, if we give heed to this that *Britton* hath already opened; for he leaveth the *ſoveraigne Iuriſdiction* of all Cauſes in the King: So that whatſoever the King hath not particularly

icularly delivered out to others, his Iuſtices *Commiſſioners* and *Delegats* that ſtill remained in himſelfe, and was exerciſed either by himſelfe in perſon, or by his *Chancellor*, *Counſellors* of Eſtate, and *Iuſtices* of Law that continually attended upon himſelfe for that ſervice.

The Admiraltie, and its name.

AND therefore, firſt concerning the *Admiraltie*, I thinke that the deciſion of *marine* Cauſes was not put out of the Kings Houſe, and committed over to the charge of the *Admirall*, untill the time of King *Edward* the third, whereunto I am led partly by the conſideration of the time of his Reign, which was much occupied with affaires beyond the Sea, both by reaſon of the warres in *France*, and of the Entercourſe

tercourſe and Trade of Merchandize which then flouriſhed, and partly for that I finde no mention of the *Admiralty* before the ſecond yeere of the Reigne of King *Richard* the ſecond, who going about (by a *Statute* made in the 13. yeere after his comming to the Crowne) to reſtraine the authoritie of that Court (which had exceeded her knowne limits, doth take order that ſhee doth meddle no further than ſhe wonted to doe in the time of his grandfather King *Edward* the third, thereby reducing her *authoritie* (as I thinke) to the firſt originall.

Admirall. *Ἀλμυρὶς.*

This *Admirall* hath the name of the *Greeke* word Ἀλμυραρχη; which being declined, and fallen from *Almurar* to *Almurall*, as Doctor *Caius* (our Country-man, following *Paulus Æmilius*, writeth) doth ſignifie the *Governour*, or *Captaine* of the Navie.

Th

The Conſtables Court, and whence the Name.

THe Court of the *Conſtable*, or *Marſhall* of *England*, determi-eth Contracts touching deeds of *Armes* out of the Realme, and handleth things concerning *Warre* within the Realme, as *Combats*, *Blazon*, *Armorie*, &c. but it may not deale with *Battaile* in *Appeales*, nor generally with any other thing that may be tryed by the Lawes of the Land.

And albeit that *Britton* (whoſe purpoſe was only to ſet forth the Courts whereof there was common uſe) hath not numbred it among the Courts of that time, yet I doe verily beleeve, that it came hither with the *Conqueror* out of *Normandie*: for amongſt other *Lawes* of his, this is one.

That

That if a *French man* doe appeal
an *Engliſh man* of perjurie or mu
der, the *French man* may defend him
ſelfe by *Battaile*, which was the
termed in *Engliſh*, *Erneſt*; a wo
that we keep yet, ſaying, when we
ſee a man fight, hee is an *Erneſt*
And foraſmuch as the thing it ſelf
was then (and never before) per
mitted by *Law*, it is to be granted
that there was even then alſo ſom
Officer who had the charge to ſe
it performed according to *Law*, wh
no doubt was the *Conſtable*, as
may well appeare, not onely b
ſome *Records* of *Hiſtorie*, but alſo b
a ſpeciall *Preſident* that I have ſeen
concerning the whole order of pro
ceeding in that behalfe before him
this man alſo had the name of *Co*
neſtable, as *Iohannes Tullius* thinketh
of the *Latin* word *Comeſtabilis*, *qua*
comes ſtabuli, that is, *Archippocomes*
or the Maſter of the *Horſe*, as we
ſpeake

peake: but as *Iohannes Goropius* af-
rmeth, the word *Constable* (or ra-
her *Conning stable*) is derived of
onning, that is to say, a *King*, and
f *Stable*, which signifieth a *Proppe*,
r *Stay*; because the *Constable* (being
principall Personage neere unto
he *King*) is a great stay and aid un-
o him.

The Chancellor and Chancerie Court.

BVt now as touching the *Chan-
cellor*, (because I purpose to
peake of him and his *Court* some-
hat more largely) it shall not be
misse, first to derive his Name, then
to divide his Authoritie and Office;
nd after that, to search for the be-
inning of him, and his *Court*: and
astly, to speake a word or twaine of
he *Equitie* by which he is said to
ule his *Sentence*.

Our

The name of *Chancellor*, *Caro. Steph. in Dictionar. Latinogræc. ex Budæi vigilia.*

Our *French* word *Chancellier*, is fetched from the *Latine*, *Cancellarius*; and that, from *cancello*; and they all three framed out of the *Greeke* Καγκελλῶ; which ſignifieth properly, to make *Lattiſes*, *Grates*, or *Croſſe-barres*, to encloſe any thing withall; and *metaphorically*, to bound and containe any thing within certaine *barres* and *limits*.

And out of theſe two ſignifications, two principall parts of his *Office* doe iſſue: For after the ſimilitude to thoſe *croſſed Barres* or *Lattiſes*, he is ſaid to *cancell*, *deface*, or *make void* a *Record*, becauſe the *vacat* thereof is done, by drawing certaine croſſe lines Lattiſe-wiſe with his Pen over it; whereby it is ſo incloſed and ſhut up, that from thenceforth no exemplifications thereof may be given abroad.

And likewiſe in his *Court* of *Equitie*, he doth (when the Caſe requi-

reth

reth) ſo *cancell* and *ſhut up* the *rigour* of the generall *Law*, that it ſhall not breake forth to the hurt of ſome one ſingular Caſe and perſon.

The great Seale, and the Office of him that beareth it.

THe *Office* and *Iuriſdiction* of this man, is manifold: For uſually he is a great *Perſonage*, a *Counſellor* of the *Eſtate*, and *Prolocutor* or *Mouth* of the higher Houſe of *Parliament*: He is alſo *Keeper* of the *Great Seale* of the King, and was wont to be elected hereunto by authoritie of *Parliament*.

For I have read, that *Ralph Nevil*, the Biſhop of *Chicheſter*, being *Chancellor* to King *Henry* the third, refuſed to yeeld up his *Seale* unto him, when he required it; affirming, that as hee had received it by the *Common Councell* of the *Realme*, ſo hee would *Math. Par.*

would not, without like *Warrant*, reſigne it againe: And in the daye of the ſame King, it was told him by all his Lords *ſpirituall* and *temporall*, That of ancient time the *Creation* and *Depoſition* of the *chiefe Iuſtice*, the *Chancellor*, and the *Treaſurer*, belonged to the *Parliament*.

7. H. 7. 15 Comment. 76.

And beſides this *Seale* of ſpeciall Grace, the *Chancellor* hath alſo the *Seale* of ſimple *Iuſtice*, and keepeth (as it were) the *Forge* and *Shop* of all *Originals*.

Stanf. Prerog. 65. a.

He hath moreover double *Iuriſdiction*; the one, of *Common Law*, the other, of *Equitie*: that firſt being limitted in power, and his latter being meere abſolute, and infinite.

According to the Rule of *Law*, he holdeth *Plea* (by Bill in *Latine*) for *priviledge* of the *miniſters* of his *Court*, and their *attendants*. So alſo upon *Recognizances*, *Statutes*, *Audita querela*,

querela, *Petitions*, *Monſtrans de Droit*: and ſo of *Wards*, *Liveries*, and *Ouſter le main*, before a ſpeciall Court was erected therefore. And of theſe he may hold *Plea* at all times, as well within the *Terme*, as after. Accor- ding to his *Conſcience* (guided by *Equitie*) hee relieveth thoſe that complaine (by *Engliſh Bill*) either for that the *Common Law* oppreſſeth them with rigour, or elſe for that it hath not fit medicine for their diſ- eaſes and griefe. Hitherto of the Name of *Office* of the *Chancellor*.

Fitz. Nat. Bre. 101.

Now for the better underſtanding of the beginning of them both, wee will examine the matter by parts: And firſt, for his originall dutie, I will uſe one or two teſtimonies of Antiquitie.

King *Edward* the *Confeſſor* imme- diately before his *death*, granted by his *Charter* many Poſſeſſions and Priviledges to the *Abbey* that was

called Saint *Peters*, in *Westminster*, in the concluſion of which *Charter*, he ſaith thus: *Ad ultimum Chartam iſtam ſigillari juſſi, & ipſe manu mea propria Signum* X *Crucis impreſſi, & idoneos teſtes annotari præcepi.* And then, after the Subſcription of *Him* and the *Queene*, and after the *Archbiſhops*, *Biſhops*, and *Abbots*, one *Reinbaldus* is named *Cancellarius*. And in the end of all, after the Date of the *Charter*, it is written thus: *Si-ward us Notarius ad vicem Reinbaldi Regiæ dignitatis Cancellarii hanc Chartam ſcripſi, & ſubſcripſi.*

After this, King *William* the *Conquerour* gave, by another *Charter*, to the ſame *Abbey* ſundry Lands in exchange for *windſor*, which King *Edward* had beſtowed upon them. And in the end of this *Grant* he likewiſe ſaith; *Ego Willielmus Dei gratia Rex, & Dux Normaniorum atque Princeps Cænomanorum hoc ſcri-*

præcep-

præcepi, & ſcriptum hoc ſigno Dominicæ Crucis X confirmando ſtabilivi, noſtræque imaginis ſigillo inſuper aſſignari curavi: And then (in order as before) it followeth; *Ego Mauricius Regis Cancellarius favendo relegi & ſigillavi.* Hereby it appeareth, that the *Office* of the *Chancellor* then was, at the firſt, to *make* and *ſeale* the *Inſtruments* that paſſed from the *Prince*.

And this I call his *Originall Dutie*, becauſe it cannot be credibly ſhewed out of any *Hiſtorie* (as I thinke) that ever there was in *England* any ſealing of *writings*, or mention of the Name of *Chancellor*, before the dayes of this *Edward*; who having ſpent a great part of his age in *Normandie*, firſt brought the uſe of the *Seale* from thence into this *Realme*; and with it (as I ſuppoſe) the Name of *Chancellor* alſo. In whoſe time alſo, *Leofricus* the *Brittaine* is the firſt that I find named *Chancellor*. *Florent. Wigor.*

For, that we learned of the *Normans* our manner of ſealing, *Ingulphus* the *Abbot* of *Croyland*, (which came out of *Normandie* hither, in the traine of the *Norman Conquerour*) aſſureth us in writing thus: *Normani Chiragraphorum confectionem cum crucibus aureis, & aliis ſignaculis ſacris in Anglia firmari ſolitam in cæræ impreſſionem mutabit, &c.* And that the Name of him that kept this *Seale*, came out of *France* alſo, it may be probably conjectured, both by the words which wee found neerer to the pronuntiation of the *French*, than of the *Latine*: and alſo by the *Office* it ſelfe, which hath beene exerciſed in *France* (under the very ſame name and nature that wee uſe it) ever ſince the time of *Charlemaine* at the leaſt.

Vincent. ſup. l. 2. de Gall. Magiſt.

And ſo it is manifeſt, that the *Chancellor* did beare this Name, and had this charge of the Kings *Seale*, and

and *Writings*, both before and in the time of the *Conquerour*: The which alſo, without all doubt, he hath ever ſince continued.

Howbeit, when I ſay *Writings*, I doe not meane that he had the authoritie of making originall *writs* here, before the time of the *Conqueſt*: For thoſe came out of *Normandie* alſo, as the very formes of the moſt of them (being expreſſed in the Booke of the *Norman* Cuſtomes) may lead a man to thinke. And that the rather, becauſe the *Saxons* (our Anceſtors) whoſe proceeding in Judgement was *de plano*, and without *ſolemnitie*, did not uſe (ſo farre as I have hitherto obſerved) to call the parties by any *Writ*, or *writing*, but to ſend for them by certaine *Meſſengers*, which they tearmed * *Thoignes*; that is to ſay, *Miniſters*, or *Servants*: even as in the *Norman* Cuſtomes, it ſeemeth that they

* Which ſignifies, *famulus & miniſter*: Ic *Thein*, by the corrupting of one *Saxon* Letter, is that which is the *Motto* at this day of the Princes Plume.

ſent *Sergeants*, without originall *writs*, or *Mandate* in *writing*. Yea, and when that manner of ſummoning by *Writ* was brought into uſe here, yet was not the ſealing of the *Writs* forthwith committed to the *Chancellor*: For you may ſee in *Glanviles* Booke, that the originall *Writs* of this time had this forme, *Teſte Ranulpho de Glanvillo*, &c. which was the Name of the *Chiefe Iuſtice* of the Kings Courts then, under whoſe ſealings they paſſed abroad.

Nevertheleſſe, for as much as it is to be read in *Bracton*, *Quod omnia brevia de pace* (which are *Prohibitions* indeed) *irrotulari debent in Rotulo de Cancellaria*; and for that, not onely the Statute of *Weſtminſter* the ſecond, which was made in the thirteenth yeere of King *Edward* the firſt, ſaith in plaine words, that the *Formedone in Reverter ſatis eſt in*

uſe

ſus in Cancellaria, and hath often mention of the *Clerks* there; but alſo that other Statute of *Articuli ſuper Chartas*, hath the expreſſe names both of the *Chancellor*, and *Chancerie*: It muſt be confeſſed, that the *Chancellor* had the keeping of the *Rolls* of *Record*, and the making out of *writs* originall, either at the ſame time that the *Common Place* was erected, or not long after it; that is to ſay, either under the Reigne of King *Henry* the third, or elſe in the beginning of *Edward* the firſt: Which later King (as Iudge *Priſot* reporteth of him) laboured carefully to reduce our *Law* into order, and writing; and in my opinion, may therefore not unworthily bee accounted our *Engliſh Iuſtinian*. *Math. Par.*

And albeit the Houſe of the *Rolls* (which hath beene of long time, as it were, the *Colledge* of the *Chancerie-*

men) was builded at the firſt by the ſame King *Henry* the third for another purpoſe; namely, for the ſuſtentation of ſuch *Iewes* as would give their names to *Chriſt*, and was therefore called *Domus Iudæorum converſorum*: yet that hindereth not, but that the ſame Houſe might ſhortly after be converted to another uſe; upon experience, as it is likely, that few *Converts* were found amongſt the *Iewes*, for to inhabite it.

And then, thus have you the *Chancellor* furniſhed with the *Seale* of *Grace*, and *Seale* of *Common Iuſtice*; and with him the *Chancerie*, for the keeping of *Records*; and the *Clerkes* thereof, for the framing of *Writs*.

And as touching the Authoritie in *Iudgement*, I ſee not what *Iuriſdiction* hee hath, (his Court of *Equitie*, and ſome powers given by late

te Statutes only excepted) which
not incident to the making or
eeping of the *Records*: For hee
nnot reforme the error of ano-
er Court; yea, error committed
his owne Court, ſhall be rever-
d in the *Parliament*: Neyther 37. H. 6.
n hee trie any *Iſſue*, taken before 14. & 15.
im; for that alſo muſt be done
the *Kings Bench*, as a thing with- *Scire facias*,
ut his *Iuriſdiction*. And that mo- *Fitzh.* 129.
ved *Scroope*, *Chiefe Iuſtice* of the
Kings Bench, (as I have ſeene)
Mi. 1. *Edward* 3. in a written *Re-*
port to ſay, That the *Chancerie* and
the *Kings Bench* were but one place,
viz. the *Bench* of the King; and
that the *Chancellor* may (by his
Hand, without *writ*) deliver any
thing to be tryed in the *Bench* of
the King.

The

The Court of Equitie, or Chancerie.

IT remaineth then, that I ſpeak of his Court of *Equitie*; which in my fantaſie, is not altogether ſo ancient as the other: For, as you have heard before, King *Edward* the firſt, and the *Parliament*, then tooke order, That the *Chancellor* ſhould follow the King, even as the *Iudges* of the *Bench* did; to the end, that he might have alwayes at hand able men for his direction in *Suits* that came before him.

The meaning whereof (as I think) was, That the *Iuſtices* ſhould informe him of the *Law*, and the *Chancellor* of *Equitie*: For otherwiſe, I ſee not what uſe he could have of the *Chancellor* in this behalfe; but onely, for that hee (being commonly a *Biſhop*, or other Spirituall per-
ſon

n) was the more meet (after the
inion of men in thoſe dayes) to
ve advice according to *Equitie*,
d a good *Conſcience*; in which re-
eſt alſo hee was *Viſitor* for the
ing, and beſtowed his *Beneſices*:
o that, ſuch as then ſought relieſe
y *Equitie*, were ſuitors to the King
imſelfe, who being aſſiſted with
is *Chancellor* and Councell, did mi-
gate the ſeveritie of the *Law* in
is owne perſon, when it pleaſed
im to be preſent; and did (in ab-
nce) either referre the ſame to the
hancellor alone, or to him and ſome
ther of the Councell: So, as the
hancellor had not then any Court
roper to himſelf, but rather aſſiſted
e King (as then did the *Chiefe Iu-
ice*, and the reſt of the Kings Coun-
ell alſo) or otherwiſe ſupplyed the
ings abſence, by ſpecial *commande-
ment*, for deciding of *Cauſes* that had
een preſented to his royall perſon.

For

For when as King *Edward* the first, in his Booke commonly called *Britton*, (which he caused to be penned about the first part of his reign, by the labour of learned *Iudges*, in the vulgar *French*, for the better publication of the *Lawes*, which then stood written in *Latine* by *Glanvile* and *Bracton*) had set downe all the sorts of Lay *Iurisdiction*; beginning his distribution at the highest (even his owne Princely *Tribunall*) and ending with the lowest *Leet*, and common *Court Baron*: Wherein also he laboureth (as it seemeth) to peruse all, and pretermit none: Yet speaketh he never a word touching any *Iurisdiction* of a *Chancerie* Court; albeit the *Chancellor* were then one of the neerest of his Councell, and did not onely attend him with advice, but did also keepe his sacred Seale, and exercised therewith the awarding of all the Kings originall

Writs,

writs, whereupon the reſt of his Courts of *Iuſtice* did worke, and proceed. Yea, it is probable alſo, that either then, or ſoone after, it reſted in the *Chancellors* power to deviſe any *writ* for the direction of *Suits* at the *Common Law*, for remedie in *Caſes*, where no proper helpe was formerly knowne. The doing whereof (conformed to the Authoritie of the *Roman Prætors*) was extraordinarie, and ſpeciall; and was therefore then, and yet is called the *Action* or *Writ* upon the *Caſe*; as by the benefit whereof, the *Suitor* in *Law* might have readie reliefe, according to the exigencie of his buſineſſe, and fitting to the *Specialtie*, *Reaſon*, and *Equitie* of his very *Caſe*.

And here it is, that our *Regiſter* affordeth ſo plentifull varietie of *writs* upon the *Caſe*, warranted by the Statute of *Weſtminſter* the ſecond,

cond, saying in the first and 25. Chapter, *In novo casu, novum remedium est apponendum; ne Curia Domini Regis deficiat, conquerentibus in justitia perquirenda.*

And thus I take the matter to have stood, during such time as the Kings high Court of *Iustice* accompanied his Royall presence.

But when as afterwards the Court of the *Kings Bench* was left to it selfe (the King no longer frequenting the same in person) and therewithall, the Authoritie of the *Chiefe Iustice* of *England* (who formerly had, as a Vice-roy, the absolute Royall power, as well of matters of *Estate*, as for *Warre* and civill *Iustice*) did cease, and decline from that originall greatnesse, and was restrained by a new forme of *Patent* (as now it stands) *ad placita coram nobis tenenda*, which is an ordinarie and limitted *Iurisdiction*: Then, I say, the King did

did commit to his *Chancellor* (together with the charge of the great *Seale*) his owne Regall, absolute, and extraordinarie preheminence of *Iurisdiction* in *Civill* Causes, as well for amendment as for supply of the *Common Law*. And therefore this great *Officer* doth beare sundry apparant markes, by the which hee is plainely knowne and distinguished from whatsoever *Iudges*: For hee is the *Mouth*, as it were, of the Prince, as appeares by his imployment in the Session of *Parliament*: he commandeth the whole great *Seale*, whereas other Courts doe use onely a part thereof; acknowledging thereby, their derived Authoritie underneath him.

This *Seale* he holdeth (without any *Patent*) by the onely deliverie thereof into his hands: He writeth, *Teste me ipsa*, in the name and person of the Queene her selfe; when the other

other *Iudges* ſay, *Teſte Iohanne Popham, Edmundo Anderſon*, or *Willielmo Periam*: His Court is ſaid to be alwayes open, and (touching *Equitie*) to have no *Record*; as well becauſe extraordinarie *Caſes* may not be limitted to any times certaine, as for that his *Iudgements* be in his owne breſt, not tyed to any preceding *Records*: Neither doth he trie any *Iſſue*, becauſe he may examine both *parties* and *witneſſes* upon *Oath*, and may (without judiciall Ceremonie) judge *ſummarie & de plano*; therefore alſo his Sentence bindeth not the thing judged. His *Superſedeas* may not ſtay a Court of *Common Iuſtice* from proceeding; neyther doth a *Scire facias* lye, for the ſumme contained in the *Subpœna*, when it is not obeyed; becauſe his power is ſingular, and of it ſelfe, which may rule the perſon which is commandable by the abſolute and

Regall

Regall *Iuſtice* of the Prince, where no ordinarie *Law* is yet provided.

And even as the neceſſitie of an *Officer* of this ſort is inevitable in every well-pollieed *Kingdome*, where the Prince is by *Office* bounden and by *Oath* ſworne to deliver *Iuſtice* to his ſubjects, howſoever the *Poſitive Law* of his Countrie doth not afford it; ſo hath this manner of *Iuriſdiction* here beene both approved and enlarged by ſundry *Lawes* of *Parliament*.

For, when as King *Edward* the third prepared for his Warres in *France*, it was enacted in the twentieth yeere of his Reigne, That the *Chancellor* and *Treaſurer* ſhould heare and determine upon *Extortions*, *Embraceries*, *Maintenances*, and other like offences that ſhould be committed in this Kings abſence. In which, albeit (as you ſee) the *Power* given was abſolute, yet was not the

Chancellor made the onely *Iudge*: But afterwards (in the 36. yeere of the ſame King) it was enacted, That if any man were grieved againſt the Articles of that Statute, or others, he ſhould have remedie in the *Chancerie*, without further or other ſuit: And hereby hee was not onely to judge alone, but alſo at the libertie of his owne diſcretion.

Sundry other acceſſions of honour were after that alſo given by ſundry Statutes: As by one, to award *Damages* upon an untrue ſuggeſtion made before him: By another, to ſend *Proclamation* of *Rebellion* againſt ſuch as by *contumacie* would not appeare, when *Proceſſe* had been awarded againſt them: And by other *Lawes*, to grant *Commiſſions* of ſundry kinds, and to doe and diſpatch many Buſineſſes; whereof it is neither needfull nor profitable to make enumeration or report in this place;

place; where I doe rather ſeeke to finde the *Originall*, than follow the *Off-ſpring*; to taſte of the *Well-head*, rather than purſue the *Channell*.

That I may therefore change this path, and make choice of another; even as theſe be the firſt, the beginnings, (that hitherto I can finde amongſt our *Statute-Lawes*) concerning this preheminent *Authoritie* of the *Chancerie* Court; ſo alſo I doe not remember, that in our *Reports* of *Common Law* there is any frequent mention of *Cauſes* uſually drawne before the *Chancellor*, for helpe in *Equitie*, but onely from the time of King *Henry* the fourth; in whoſe dayes (by reaſon of thoſe inteſtine troubles) *Feoffements* to *Vſe* did either firſt begin (as ſome hath thought) or elſe did firſt grow common and familiar, as all men muſt agree.

For remedie in which Caſes of *Vſes*, chiefely the *Chancerie* Court

was then fled unto, as the only *Altar* of helpe and refuge: But whensoever this Court of *Equitie* tooke beginning to be a distinct Court, I have made proofe (as I thinke) that the power thereof was alwayes in exercise.

And considering that the *Prince* of this *Realme* is the immediate *minister* of *Iustice* under *God*, and is sworne at his *Coronation*, to deliver to his subjects *æquam & rectam Iustitiam*; I cannot see how it may otherwise be, but that besides his Court of meere *Law*, he must either reserve to himselfe, or referre to others a certaine soveraigne and preheminent *Power*, by which he may both supply the want, and correct the rigour of that *Positive* or *written Law*, which of it selfe neither is nor can be made such a perfect *Rule*, as that a *Man* may thereby truly square out *Iustice* in all *Cases* that may happen.

For

For *written Lawes* muſt needs bee made in a generalitie, and be grounded upon that which happeneth for the moſt part, becauſe no wiſdome of man can fore-ſee every thing in particularitie, which Experience and Time doth beget.

Leges habent ſe ut univerſalia ad ſingularia. Ariſtot. Ethic. 5.

And therfore, although the *written Law* be generally good, and juſt; yet in ſome ſpeciall caſe, it may have need of Correction, by reaſon of ſome conſiderable Circumſtance falling out afterwards, which at the time of the Law-making was not fore-ſeene: Whereas otherwiſe, to apply one generall Law to all particular caſes, were to make all *Shooes* by one *Laſt*, or to cut one *Glove* for all *Hands*, which how unfit it would prove, every man may readily perceive. And hereof this *Equitie* hath the name in *Greek* ἐπιείκια, of ἐπὶ *ſecundum*, and εἰκὸς *conveniens, vel rationi conſentaneum*; becauſe it

Ipſæ etiam Leges cupiunt ut iure regantur. Cato.

doth not onely weigh what is generally meet for the moſt part, but doth alſo conſider, the perſon, time, place, and other circumſtances in every ſingular caſe that commeth in queſtion, and doth thereof frame ſuch judgement as is convenient and agreeable to the ſame: So that in ſum the *written Law* is like to a ſtiffe rule of *Steel*, or *Iron*, which will not be applied to the faſhion of the *Stone* or *Timber* whereunto it is laid: And *Equitie* (as *Ariſtotle* ſaith well) is like to the leaden rule of the *Leſbian Artificers*, which they might at pleaſure bend, and bow to every ſtone of whatſoever faſhion. And hereby it may alſo appeare, what uſe there ought to be aſwell of the *Poſitive* or *written Law*, as alſo of *Equitie* it ſelfe: For ſeeing that the *Poſitive* and *Common Law* is made meet for the moſt part, and that *Equitie* is added for helpe in ſome

ſome few or ſingular caſes, it followeth by reaſon, that commonly and regularly the *poſitive Law* ſhould bee put in ure, and that *Equitie* ſhould not bee appealed unto but only in rare and extraordinary matters, leſt on the one ſide, if the *Iudge* in *Equitie* ſhould take *Iuriſdiction* over all, it ſhould come to paſſe (as *Ariſtotle* ſaith) that a *Beaſt* ſhould beare the rule: For ſo hee calleth man, whoſe *Iudgement*, if it bee not reſtrained by the Chaine of *Law*, is commonly carried away, with unruly affections. And on the other ſide, if onely ſtreight Law ſhould bee adminiſtred, the helpe of *GOD* which ſpeaketh in that *Oracle* of *Equitie*, ſhould be denyed unto men that neede it. And therefore even as two *Herbes* being in extremitie of heate, or cold, bee by themſelves ſo many

poyſons, and if they bee skilfully contempered, will make a wholeſome *Medicine*: So alſo would it come to paſſe, if either this *Arithmeticall Gouernement*, (as they call it) by rigour of *Law* onely, or this *Geometricall Iudgement* at the pleaſure of the *Chancellour* or *Prætor* onely ſhould bee admitted; and yet if they bee well compounded together, a moſt ſweete and harmonicall *Iuſtice* will follow of them. A good *Chancellor* will not then make this Proclamation, *Nullus recedat à Cancellaria ſine remedio*, and thereby not onely abuſe the Text of the Statute, which meant onely the making of *Writs* (that there might bee *in conſimile caſu remedium conſimile*) but alſo arrogate authoritie in every complaint that ſhall bee brought before

before him, upon whatsoever suggestion, and thereby both overthrow the authoritie of the Courts of *Common Law*: Then to bring upon men such a confusion and uncertainetie, as hardly any man should know how, or how long to hold his owne assured to him. Nay rather a good *Chancellour* will permit the *Common Law* to hold her just honour, and not make such violent irruption upon her borders, but will so moderate his power, and provide, that the Gate of *Mercie* may bee opened in all Calamitie of Suit: to the end, (where need shall bee) the Rigour of *Law* may bee amended, and the short measure thereof extended by the true consideration of *Iustice* and *Equitie*. In which behalfe this our Age hath greatly to thanke *God*, for that by the ministerie

rie of our gracious *Queene Elizabeth*, hee doth not onely leave unto us the right uſe of thoſe *Courts* of meere *Law*, furniſhed with men of greater learning and integritie, but hath alſo by her own ſelection placed in that *Prætoriall Seat* of *Chancerie*, a man no leſſe learned in the *Common Lawes* of this Realme, than accompliſhed with the skill of this *Moderation* for *Equitie*.

I ſee that occaſion is here offered me, to enter into the handling of ſundry Queſtions concerning the Order of the *Chancerie*, and chiefly of this one thing: whether it be meet, that the *Chancellor* ſhold appoint unto himſelfe, and publiſh to others any certaine *Rules* & *Limits* of *Equity*, or no; about the which men both godly and learned doe varie in opinion: For on the one part it is thought as hard a thing to preſcribe to *Equitie* any

certaine

certaine bounds, as it is to make any one generall Law to be a meet meaſure of *Iuſtice* in all particular caſes. And on the other ſide it is ſaid, that if it be not knowne before-hand in what caſes the *Chancellour* will reach forth his helpe, and where not, then neither ſhall the Subject bee aſſured how, or when he may poſſeſſe his owne in peace, nor the Practizer in *Law* be able to informe his Client what may become of his Action: But becauſe this and the like matters be of more difficultie then that I may with modeſtie take upon me to determine them, and for that alſo it is not my preſent purpoſe to diſpute what is convenient to bee done in any Court, but rather to diſcourſe the beginning, and acknowledge the benefit of them all, I will onely wiſh theſe two things. Firſt, ſome good meanes were adviſed,

vised, whereby Suitors in the *Chancerie*, and such like Courts, might before their day of hearing, which they purchase not without great expences learne whether they shall be dismissed thence to the tryall of the *Common Lawes*, or no; which thing whether it might be better performed by suffering *Plea*, to the Jurisdiction of the Court, or by summary consideration of the case, collected out of the Bill and answer, or by a faithfull report of the estate of the matter, under the *Oath*, and at the perill of both parties; or by some other way, I will leave to the Iudgement of such as have more *wisedome* to advise, and *Power* to execute.

Againe, when as the *Chancerie*, or any such Court shall be intituled to hold *Plea* of right of Land upon the suggestion of uncertaine *Charters* or *Evidences* should be brought into

into the Court; that the parties ſhould be diſmiſſed to the *Common Law*, or enterplead for the *Right* in the *Land*; that thoſe *Evidences* alſo ſhould be ſent thither at the day of *Tryall*, to be given in *Evidence*; and that, according to the *Right*, ſhould fall out for the *Land*: So the *Charters* alſo ſhould be delivered to the one, or to the other of the parties: Whereas now it is often ſeene, that one man doth implead another, by this pretence, in the Court of *Equitie*, for cauſe that requireth no helpe of *Equitie* at all; but doth moſt properly pertaine to the determinations of the *Common Law*.

But leaving to others the conſideration of this alſo; let mee ſumme up the reſt of your *Lay Courts*, and labour to make an end of them.

The

The Court of Star-chamber.

AS in the Government of all *Common-weales*, ſundry things doe fall out, both in *Peace* and *Warre*, that doe require an extraordinarie helpe, and cannot await the uſuall cure of common *Rule*, and ſetled *Iuſtice*; the which is not performed, but altogether after one ſort, and that not without delay of helpe, and diſpenſe of time: So, albeit here within this Realme of *England*, the moſt part of *Cauſes* in complaint are and ought to be referred to the ordinarie proceſſe & ſolemne handling of *Common Law*, and regular diſtribution of *Iuſtice*; yet have there alwayes ariſen, and there will continually, from time to time, grow ſome rare matters, meet (for juſt reaſon) to be reſerved to a higher hand, and to be left to the aide of

ab-

abſolute *Power*, and irregular *Authoritie*.

The which thing that it may the more plainely appeare by particularitie, it ſhall peradventure be worthy the labour to examine: Firſt, for what ſort of *Offences* the *Suits* ought to be commenced; then, before *whom* they ought to be heard; and laſtly, what ſpeciall *Place* hath beene the moſt uſuall and frequented Court, for the receiving of the ſame. The three parts of this Diſcourſe.

The firſt part of this Diſcourſe.

SEeing that all *Actions* be eyther *Civill*, or *Criminall*, that is, either concerning *Right*, or *Revenge*; and the *Common Place* heareth the *Suits* of *Civill nature*, and the *Kings Bench* receiveth thoſe things that doe concerne *Offences*:

It

It might ſeeme that all manner of *Suits* (both *Common*, and of the *Crowne*) ought to be drawne in the one or the other of the Courts; and that it ſhould be in vaine to imagine upon any other *Iudgement-place* beſides them.

But yet, even as by the uſage of all *Lawes* it is confeſſed, that in the neceſſitie of *Civill Cauſes*, and calamities of that kind, recourſe may be had to the *Prætor*, or *Chancellor*, for aid againſt the inflexible *rigour* of the *Common Law*: So likewiſe it is to be granted, that whereſoever the ordinarie Courts of *Iuſtice* be hindered in their courſe and orderly proceeding; or where the *Evill* and *Crime* it ſelfe is either new in *Device*, for which no *Law* hath beene yet provided; or where the *Miſchiefe* doth ſurmount the common growth ſo farre, that ſtanding *Law* hath no reach, nor condigne puniſh-

ment,

ment, to make it exemplarie; there, and in ſuch caſes, *helpe* and *ſupply* muſt elſewhere be ſought, and found; or otherwiſe, *Iuſtice* muſt limpe on the better legge, and muſt let *Offenders* to eſcape, and paſſe unpuniſhed.

Now, albeit theſe *Offences* be variable, and infinite in their ſundry ſorts, according to the changeable and bottomeleſſe *Devices* and *Draughts* of thoſe wicked *Artificers*, out of whoſe *Shops* they be ſent; ſo as I may truly ſay with the Poet,

Non, mihi ſi linguæ centum, ſint oraque centum,
Ferrea vox, omnes ſcelerum comprehcudere formas,
Omnia pœnarum percurrere nomina poſſem.

Yet, to the end that they may in ſome open manner be detected, I will endeavour to containe them all within ſome of theſe generall Grounds that doe enſue.

The ſundry ſorts of extraordinarie Criminall Cauſes.

AS all theſe extraordinarie *Cauſes* be in their owne nature *Criminall*, and not *Civill*; ſo all theſe *Criminall* doe proceed either from *Fraud*, or *Force*, or from them both mixed together; and likewiſe they be all committed either by publike or private perſons, and ſometimes againſt the one and other, ſometimes againſt the other of them.

The Offences of publike perſons.

BY the miſdemeanours of publike men, and *Officers*, that are forged out of *fraud*, and *wilineſſe*; I meane the *Corruptions* of the *Judges* of any Courts, of the *Iuſtices* of *Peace*, and whatſoever other *Commiſſioners*

miſſioners, or *Delegates*, that either for *Covetouſneſſe* in themſelves, or through *Friendſhip*, or *Hatred* towards any of the parties, will dip their owne fingers in the *Suits* that depend before them; and will be ſeene more like to affectionate *Advocates*, or *Parties*, than to ſincere and indifferent *Iudges*; either racking *Law* too long, that it may overreach the one ſide; or ſhrinking it too ſhort, that the benefit thereof ſhall not extend to the other ſide; or otherwiſe, indirectly abuſing the *courſe* of their Courts, or leaping the Pale of *integritie*, and *Iuſtice*; within the limits or bounds whereof, they ought to have and keepe them. And in this part, as ſome may ſlyly abuſe thoſe good gifts, in reſpect of which they are called to the *Magiſtracie*; ſo other-ſome ſticke not to uſe meanes both forcible and ſubtill, for the winning of their wills:

thinking, that for their apparant *Nobilitie*, ancient *Gentrie*, large *Possessions*, overflowing *Riches*, or store of *Friends*, (joyned with the *Roomes* of high *Authoritie*, that they have above their *Neighbours*) no passage ought to bee fore-closed against them; howsoever it lead both to the discredit of themselves, and to the danger or undoing of other men.

Now, howsoever there be no ordinarie *Medicine* of *Lawes* for infinite particular *Maladies*, that be caused of these evill *humours*; yet I doubt not, but that all *wise Men* will readily acknowledge, that there is not any one kind of *Example*, proceeding from any Court of ordinarie resort, that can be more fruitfull or beneficiall to the *Common good* than it shall be by some stately *Authoritie*, to checke the *insolencies* and *outrages* (if any such shall happen

of the *Iudges*, *Iuſtices*, and other men that be great by their places, and *Authoritie*; for thereby both themſelves may be either amended, or removed; their equalls ſhall be taught to beware, to take heed, and their inferiours ſhall quake for feare, when ſeeing their betters condignely puniſhed, they can promiſe to themſelves no hope of eſcape, or impunitie.

The Miſdemeanors of private Men.

ON the other ſide, the private and meaner ſort of men, wanting the furniture of *Authoritie*, and of ſundry other Advantages, wherewith the great ones are apparelled, doe beat their braines for the finding out of ſhifts and ſubtilties, and doe for the moſt part lay Hookes, and make Traps as it were for the

taking, intangling, and ſnaring of ſilly and ſimple folks.

And hereof ſpring thoſe ſo many cunning Coſenages; crafty reaches, undermining devices, ſubtile complots, counterfeit drifts, and fraudulent fetches; the Egges whereof be laid ſometimes by deſire of money, and ſometime by thirſt of revenge, but be alwayes, or for the moſt part hatched by *Perjurie*, *Briberie*, and *Corruption*, and are wholly addreſſed to the diſcredit of the good name of ſome, to the detriment of others in their Goods and Fortunes, and to the great danger, and hazard of the bodie and life of many a man.

And here againe it is not meet and juſt, that when the wicked ſort of men have excogitated any thing with great Labour of wit and cunning, ſo as it may ſeeme they have drawne a quinteſſence of miſchiefe,

and

and ſet the ſame abroach, to the remedileſſe hurt of the good and quiet Subject; Is it not meet (I ſay) that Authoritie it ſelfe alſo, which is the ordinance of *God*, for the defence of the one, and puniſhment of the other, ſhould ſtraine the line of *Iuſtice* beyond the ordinarie length and wonted meaſure, and thereby take exquiſite avengement upon them for it? yea is it not right neceſſarie, that the moſt *godly*, *honourable*, *wiſe*, and *learned* perſons of the Land, ſhould be appealed unto, that they may apply new remedies for theſe new diſeaſes, and that they may be prayed to whet, and exerciſe the edge of their honourable Authorities, excellent Wiſdomes, and gifts of the higheſt learning againſt ſuch divelliſh impoſters, miſchievous deceivers, and moſt dangerous *Sycophants?* No leſſe reaſon it is alſo,

ſo, that all ſuch good and upright *Iuſtices*, *Commiſſioners*, *Officers*, and whatſoever publike perſons, as without ſeeking any by-paths, or ſtarting holes, doe walke *Regia via* in their ſeverall duties, (and yet neverthelesſe be aſſailed by the evill tongues, oppugned by the injurious wrenches, or diſcomforted by the unruly countenances of inſolent men) ſhould have ſome place whereunto, in default of common helpe, they may flye for refuge, as to a certaine *Sanctuarie*, and *holy Anchor*, and where they may ſhrowd themſelves in their innocencie, and finde the defence of their Authoritie at the hands of them, by whoſe gift, meanes, or commendation they firſt received the ſame.

The apparant lacke of ordinarie Helpe.

BVt leſt it be ſaid unto me, that theſe things be not hid from the *Wiſdome* of the ſtanding *Law*, which hath alſo opened remedie by way of ordinarie juriſdiction in whatſoever evills of theſe kindes, it ſhall be meet for the more manifeſtation of that which I intend, to fall to ſome more ſpecially, and to exemplifie my whole conceit, by giving a true taſte of all in theſe few heads of particular caſes.

1 If therefore ſuch a one as hath *Iura regalia*, will denie originall *Writs*, or other meanes of *Iuſtice*.

2 If one that hath a judiciall place, ſhall by corruption miſ-lead the whole courſe of an *Evidence* given to a *Iurie* that is charged before him, or ſhall pleaſingly heare the

the proofes of the one partie, and peremptorily cut off the other, whereby the truth of their controverſie is not brought to light.

3 If a good and ſerviceable *Iudge*, *Iuſtice*, or *Officer* ſhall bee baited, and bitten with libells and ſlanders that be not actionable.

4 If a *Iuſtice* of peace ſhall bee contemptuouſly deſpiſed, and offered indignities, for which no private Action will bee maintained.

5 If one ſhall attempt to coyne monie, and ſhall be deprehended in the doing thereof before he hath perſormed it.

6 If a Counſeller at the Law ſhall give advice ſtanding with the Learning at *Law*, and yet tending onely to vexation, delay of *Iuſtice*, or deceit of private perſons, or to the defrauding of the Queenes Majeſtie in her lawfull *Prerogative*, or

to

to the breaking of a good and wholeſome *Statute-Law*.

7 If a man of behaviour and countenance, ſhall ſecretly practice with others for the beating or murthering of any other perſon, and bringeth it not to effect.

8 If Cities, Townſhips, Colledges, or other Corporations, ſhall wilfully wrangle, and factiouſly rent themſelves in ſunder, whereby their whole politique body ſhall be hindered, or otherwiſe become unprofitable; or ſhall cauſeleſly diſcountenance, or diſplace any honeſt perſon of their company.

9 If one private member of ſuch a body, ſhall by vexation in *Law* ſo unquiet the Head, and all the reſt of the Companie, that they cannot apply their common calling.

10 If Wilfull *perjurie* be committed by any perſon, in caſe where no *Indictment* lyeth, nor *Action* upon

the

the *Statute* of *Perjurie* may be maintained.

11 If a man ſhould accuſe another to the Queenes *Majeſtie*, for ſpeaking words againſt her, and cannot maintaine the accuſation.

12 If a man ſhall wilfully offend a *Proclamation* made by her *Majeſtie* upon urgent cauſe, for a time onely, and untill that *Law* by *Parliament* may be provided.

13 If the *Iurie*, or *Homage* in a *Court Baron*, will paſſe againſt plaine *Evidence*, in a *Plaint* of *Aiel Formedone*, or ſuch like.

14 If a *Grand Iurie* will, againſt their *Evidence*, finde *Ignoramus*, or a *Iurie* for *Life*, or *Death*, will finde a hainous *murtherer* to be *Not guiltie*.

15 If an *Officer* that ought to be ſworne, will exerciſe his *Office*, without any *Oath* taken by him.

16 If a lewd fellow ſhall counterfeit, upon a *Writ* of *Covenant*, the

the *Officers Hands*, to deceive her *Maieſtie* of her due *Fine*; or the *Hand* of her *Atturney Generall*, for the better paſſing of a *Pardon*; or ſhall ſet the Name of a *Counſellor* to a *Bill* in *Chancerie*, without his privitie and knowledge.

17 If one that is ſued upon a *Title* of *Leaſe* for yeeres, be *outlawed*, and hath his *Pardon*, and yet will conceale his *Pardon*, and cauſe his *Chattels* to be ſeized for the Queene, and then procure them to be committed to a friend of his.

18 If a man will ſuborne ſome to appeare for others as *Defendants*, in a *Criminall Cauſe*.

19 If a coozening Crew ſhall entice a young man to the companie of a woman, and cauſe him to be deprehended by one that pretendeth to be her Husband; and ſo, for his redemption, he ſealeth Leaſes of his Lands, and maketh Gifts

of

of his Goods: If (I ſay) any of theſe, or the like miſdemeanours, (whereof the number is infinite) ſhall be committed, I ſee not how they may be chaſtiſed by the Rod of any ordinarie *Authoritie*, ſtanding *Law*, or *Statute*.

And therefore, conſidering that they tend (though in divers degrees) to the diſhonour of *God*, the contempt of her Royall *Majeſtie*, the diſturbance of the *Common peace*, and the diſheriſon, danger, & death of good *Subjects*; I ſuppoſe, that no man will be either ſo wicked, as to affirme, that they ought not to be puniſhed; or ſo unadviſed, as to hold, that the ancient and godly *Policie* of this *Kingdome*, and *Commonwealth*, hath not left the meanes to bring them into *Iudgement*: For howſoever the *Nationall*, *Civill*, or *Poſitive Lawes* of particular People and Countries (which doe worke

upon

upon *Generalities*, and muſt therefore faile in many *Specialls*) doe not provide *puniſhment* for all ſorts of *evils* that may ariſe; yet may it not be doubted, but that the *Iuſtice* of *God* (whereof the *Law* of *Humanitie*, *Reaſon*, and *Nature* hath ſome remnants ſaved for us, from that great ſhipwracke of our firſt Parent *Adam*) doth keepe correction in ſtore for them.

And therefore let us rather enquire, who it is that both may and ought to award this correction and chaſtiſement for the ſame.

The ſecond Part: Enquiring who is Iudge of theſe extraordinarie Criminalls.

I Shall not need to repeat that which I have before this time opened, touching the beginning of the Kingly *Power*, and *Authoritie*, for

The King. for the deliverie of *Iustice* to all the sorts, and in all the Suits of his Subjects. But I will confirme by proofes drawn out of our Countrie *Lawes*, and *Lawyers*, that the selfesame general *jurisdiction* is appropriated to all the *Kings* of this Realme of *England*.

Master *Henry Bracton*, that lived in the time of King *Henry* the third, hath in the *ninth* and *tenth Chapter* of his Booke, these words following: *Rex (& non alius) debet judicare, si solus ad id sufficere possit: cum ad hoc per veritatem sacramenti teneatur astrictus. Excercere igitur debet Rex potestatem Iuris, sicut Dei Vicarius, & Minister in terra. Sin Dominus Rex ad singulas causas determinandas non sufficiat, ut levior sit illi labor in plures personas, partito onere eligere debet viros sapientes, & timentes Deum, & ex illis constituere Iusticiarios.*

The words doe prove two things

service

ſerviceable for this purpoſe: Firſt, That the King ought onely to be the *Iudge* of his people, (if he alone were able to performe that *Office*) as well becauſe hee is within his owne *Kingdome* the *Vice-roy* of *God*, (the ſupreme *Iudge* of the World) as alſo for that hee is thereunto bounden by *Oath*, taken at the *Coronation*. The ſecond, That albeit he doe (for the multitude of *Cauſes*) ſubſtitute others underneath him, yet is hee not thereby diſcharged himſelfe; for it is done, *ut levior ſit illi labor*, that his labour be the lighter; not, that he ſhould ſit unoccupied. And leſt you ſhould doubt, that ſo much is not compriſed in that *Oath* of his, one *queſtion* therein, amongſt others, is this; *Facies fieri in omnibus Iudiciis tuis æquam, & rectam Iuſtitiam, & diſcretionem in miſericordia & veritate ſecundum vires tuas*: To the which hee anſwereth,

faciam: wherein the words, *Iudiciis tuis, & vires tuas*, doe more properly denote his owne doing, than the doing of his ſubalterne *Iuſtices*; albeit their *Iudgement* be after a certaine manner, the *Iudgement* of the King himſelfe alſo, from whence their *Authoritie* is derived.

Much like the words of *Bracton*, ſpeaketh King *Edward* the firſt, in the beginning of his Book of *Lawes*, commonly called *Brittan*: where, after hee had ſhewed that hee is the *Vicar* of *God*, and that he hath diſtributed his *Charge* into ſundry portions, becauſe he alone is not ſufficient to heare and determine all complaints of his people; then he addeth theſe words: *Nous volons que noſtre Iuriſdiction ſoit ſur touts Iuriſdictions en noſtre Realme: Iſſint que en touts maners de Felonies, Treſpas, Contracts, & en touts maners de autres actions perſonals, ou real ayons poer arendre,*

&

& faire rendre les Iudgments tiels come ils afferont ſans auter proceſſe, par la ou nous ſçavous la droit verite come Iuges: Wee will (ſaith the King) that our owne *Iuriſdiction* be above all the *Iuriſdiction* of our *Realme:* So as in all manner of *Felonies*, *Treſpaſſes*, *Contracts*, and in all other *Actions perſonalls* or *realls*, we have *power* to yeeld (or cauſe to yeeld) ſuch *Iudgements* as doe appertaine (without other *Proceſſe*) whereſoever wee know the right truth, as *Iudges*.

Neither may this be taken to be meant of the *Kings Bench*, where there is only an imaginarie preſence of his *Perſon*, but it muſt neceſſarily be underſtood of a *Iuriſdiction* remaining, and left in the *Kings* Royall *Body* and *Breſt*, diſtinct from that of his *Bench*, *Marſhalſey*, *Common Pleas*, *Exchequer*, and the other ordinarie Courts: becauſe he doth immediately after, in the ſame place, ſeve-

rally set forth by themselves, as well the *Authoritie* of the *Kings Bench*, as of the rest of those his ordinarie Courts of *Iustice*.

And that this was no new-made *Law*, or first brought in by the *Norman Conquest*, I must put you in mind of that which I have vouched before, out of the *Saxon Lawes* of King *Edgar*, where you did reade it thus: *Nemo in lite Regem appellato, nisi quando domi jus consequi non poterit, sin juris summi onere domi premitur, ad Regem ut is id oneris allevet, provocato:* Let no man in *Suit* appeale to the King, unlesse he may not get *right* at home; but if that *right* be too heavie for him, goe to the King to have it eased. By which it may evidently appeare, that even so many yeeres agoe there might *Appellation* be made to the Kings *Person*, whensoever the *Cause* should enforce it.

The

The Kings Councell.

BVt now although I ſpeake here expreſſely of the *Kings* perſon, yet I meane not ſo preciſely, as though that either the *King* ought to performe theſe Iudgements in his owne perſon alone, or that hee muſt of neceſſitie be preſent in perſon, whenſoever others ſhall accompliſh them on his behalfe.

Only I doe affirme, that the *King* hath a ſupreme Court of *Prerogative*, whereunto his Subjects in ſuch their neceſſities may provoke, as to his owne *Royall perſon*; and wherein there is place left for him to ſit, the which our *Kings* in perſon have oftentimes frequented, and were aſſiſted with ſuch men of *Nobilitie*, *Wiſedome*, and *Learning*, as he ſhall chuſe, he may in *Royall preſence* uſe his judiciall *Authoritie*, or other-

wiſe for the time abſtaine to be *preſent* there, and leave the proceedings to thoſe ſelected men: but yet ſo, as both the *ſuits* bee exhibited to *himſelfe* by *name*, and that he alſo receive *intelligence* thereof when as it ſhall be requiſite: and theſe men thus taken for their *counſell* and *advice*, wee doe commonly call *The Kings Councell*; which *words* foraſmuch as it is diverſly uſed in our *Law*, and doth not alwayes import the ſame thing, it ſhall be fit in ſome few words to diſtinguiſh the ſignifications, and ſorts thereof.

The generall Aſſembly in *Parliament*, is termed in our old *Writs*, *Commune Conſilium Regni Angliæ*, the Common Councell of the Realme of *England*, called together by the *King*, for advice in matters concerning the whole Realme: of which Aſſemblie, ſome be *Counſellors* by Birth,

Birth, as the *Barons*; ſome by Succeſſion, as the *Biſhops*; and ſome by Election, as *Knights* and *Burgheſſes*; and theſe be all (for the time) the *Kings Councell*. The *Maſters* of the *Requeſts* alſo, which doe hold Plea of *Complaints* exhibited for *Equitie* to his owne perſon, be according to the uſuall forme of writing there, named the *Kings Councell*.

And beſides both theſe, there is another *Councell* of the *King*, whereof there is mention made by name both in the Statute 37. *Edward* 3. *cap.* 18. which I reſerve to be hereafter recited for another purpoſe, and likewiſe in one agreement of an Exchange, had for the Caſtle of *Berwicke*, betweene King *Henry* the fourth, in the 5. yeere of his Reigne, and the Earle of *Northumberland*, where the King promiſeth to deliver to the Earle, Lands and Tenements to the value of the Caſtle.

by theſe words, *Per aviſe & aſſent des Eſtates de ſon Royalme, & de ſon Parlement (perainſi que Parlement ſoit devant le Feaſt de St.* Lucie) *ou autrement per aſſent de ſon grand Counſeil, & auters Eſtates de ſon dit Realme, que le Roy ferra aſſembler devant le dit Feaſt en caſe que le Parlement ne ſoit, &c.* That is; By the advice and aſſent of the Eſtates of his Realme, and of his Parliament, (ſo that the Parliament happen before the Feaſt of St. *Lucie*;) otherwiſe, by the aſſent of his *Great Councell*, and other Eſtates of his ſaid Realme, which the King will cauſe to bee aſſembled before the ſaid Feaſt, in caſe the Parliament doe not happen, &c. as in the inſtrument thereof, Dated at *Lichfield* 27. of *Auguſt*, in that yeere, and remaining in the *Tower*, may be read.

By which words it is plaine, that there is a *Great Councell* beſides the *Parli-*

Parliament, which no doubt, is the ſame whereof the *Statute* (made afterwards in the 13. yeere of the ſame King *Henry* 4. *chap.* 7. againſt *Riots*, doth ſpecially ſpeake, commanding, that where the truth of a *Riot* may not be found by the inquirie of twelve men, there the *Iuſtices* of the *peace*, and *Sheriffe*, or *Vnder-Sheriffe* ſhall certifie before the King and his Councell all the deeds and circumſtances thereof: which ſpeech cannot be meant, either of the *Chancerie*, or of the *Kings Bench*, becauſe the latter is diſtinguiſhed from it by expreſſe words of the ſame Statute, and the former was afterward 8. *Hen.* 6. *cap.* 14. enabled to receive Certificats of this kinde, by the Letters of the ſame *Iuſtices* and *Sheriffe* or *Vnder-ſheriffe*.

This *Councell* of the *King*, conſiſteth onely of perſons thereunto eſpecially elected by *himſelfe*, and there-

thereupon ſworne to ſerve him with their faithfull advice and counſell; and whether they be *Nobles*, or no, it is not materiall, ſeeing that the Calling commeth not by *Birth*, but groweth by *Election*; ſo as it excludeth all that be not admitted: A thing that may well appeare, not onely by the ſpeciall forme of their *Oath*, by the number of themſelves (diſtinctly knowne to bee more or leſſe at ſundry times) by keeping in Record the entrie of their ſeverall *Names*, and by the *Fee* that each of them doth ratably pay after his degree when he is admitted: but alſo by experience of former times, and not without ſome example of Execution in our owne Age: And they alſo of this *Councell* of the *King* have bin diverſly termed ſome of the *Privie Councell*, for that they were more inwardly and ſecretly uſed in matters of Eſtate: Beſides, the

the

they were ordinarily imployed alſo upon other cauſes with the reſt that have beene called of Councell at large.

For whereas it is reported in *Dorſo clauſo de Anno* 16. *Edwar.* 2. *Membr.* 5. That *Henry* the Lord *Beaumont* was for his unreverent ſpeeches to the *King*, commanded out of the *Councell-houſe*, it is there ſaid withall, that he was *Iuratus de magno & ſecreto Conſilio Regis*; howbeit they both are for this our purpoſe, that great *Councell* of the *King* whereof I ſpake even now, and be ſo incorporate with him, as hee ſpeaketh by them, and their *Iudgements* are reputed to bee his owne: To which I may the more boldly affirme, when I read 2. *Rich.* 3. 11. & 18. *Hen.* 8. 1. That *Fynes* aſſeſſed by the *Kings Iuſtices* of any *Court*, are to be underſtood to bee *Fynes* adjudged by the *King himſelfe*.

And

And thus now have I both *ſhewed* and *confirmed* who it is that ought to hearken to theſe *complaints*.

The Conflicts betweene the Law abſolute and ordinarie.

BVt here have I mightie Adverſaries to encounter withall; the which maintaining with their whole Forces the ordinarie *Iuriſdiction*, will in no wiſe yeeld to any ſuch abſolute and unbridled *Authoritie*, as I may ſeeme to advance.

And therefore firſt of all, that *Great Charter* of the *Liberties* of *England*, (which I may call the firſt *Letters* of *Manumiſſion* of the people of this *Realme* out of the *Norman* ſervitude) doth by the *Mouth* of the King (amongſt many other Freedomes) ſpecifie this one: *Nullus liber homo capiatur, vel impriſonetur, aut diſſeiſietur de libero tenemento ſuo,*

vel libertatibus, vel liberis conſuetudinibus ſuis, aut utlagetur, ut exuletur, aut aliquo modo deſtruatur, nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, vel per Legem terræ.

By pretence of which *Grant*, the common *Subject* thought himſelfe free from that irregular *Power* which the former Kings and their Councell of Eſtate had exerciſed upon him; and phantaſied, that he ought not thenceforth to be drawne to anſwer in any *Caſe*, except it were by way of *Indictment*, or by tryall of good and lawfull men (being his Peeres) onely after the courſe of the *Common Law*: Whereas indeed, theſe words of the *Statute* ought to be underſtood of the reſtitution then made of the ordinarie *Iuriſdiction* in common *Controverſies*, and not for reſtraint of the abſolute *Authoritie*; ſerving onely in a few rare and

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ſingular *Caſes*: And therefore ſee what followed; ſome *Caſes* dayly creeping out of *Suits*, for which no *Law* had beene provided; and ſome *miſdemeanours* alſo happening from time to time, in the diſtribution of thoſe *Lawes* that were alreadie eſtabliſhed.

It came to paſſe, that many finding none other helpes for their griefes, were enforced to ſue to the Kings *Perſon* it ſelfe, for remedie: And hee againe knowing himſelfe to be the *Chiefe Iuſtice* and *Lieutenant* of *God* within his owne *Realme*, thought himſelfe bound to deliver *Iudgement* and *Iuſtice*, whenſoever it ſhould be required at his hands. The which, for as much as he could not evenly, and with uprightneſſe performe, unleſſe hee called the adverſarie partie, neither had he many times; eſpecially in a new and ſudden occurrent, any ordinarie *Writ*, or

Proceſſe,

Proceſſe, whereby to call him of neceſſitie; hee was to reſort to the Kingly and abſolute *Power* againe, and by his *Purſuivant*, or *Letters*, to convent him, and then to proceed to the hearing and determining of the *Cauſe*, as to his Princely *Office* did appertaine.

The which thing was ſo farre from offending the *Subject* for a long time together, that in the *Parliament* 28. *Edw.* 1. *cap.* 5. the *Commons* aſſented to an Act, by which it was provided, That the *Chancellor* and the *Iuſtices* of the *Kings Bench* ſhould follow the King whereſoever hee went; to the end, that he might alwaies have at hand men learned, and able to adviſe him in ſuch *Caſes* as he admitted to his hearing.

Nevertheleſſe, (ſuch is the weakneſſe and imperfection of man) the time was not long, but the *Subject*, which ſo deſirouſly fled to the King,

and

and his Counceil for ſuccour, did as haſtily retire, and run backe to the ordinarie *Seat* and *Iudge* againe.

The which thing, whether it happened by the chargeable and hard acceſſe to the perſon of the King, (who could not but be many wayes buſied with more important matters) or by ſome delay of *Iuſtice* that fell in his abſence out of the *Realme*, by occaſion of forraine *Warres*, and other *Affaires*; or by the undertaking of *Cauſes*, without the advice and preſence of the ſaid *Councellors* and *Iuſtices*, it needeth not any long and curious inquiſition: But this is certaine, that within five yeeres next after the beginning of the Reigne of King *Edward* the third, it was commanded by *Parliament*, That the forme of the *Great Charter*, in this point, ſhould be wholly and inviolably obſerved. And for the more aſſured ſuppreſ-

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ſion of all attempts that might breake forth to the contrarie, it was afterwards by the *Parliaments*, 25. *Edward.* 4. *cap.* 4. 28. *Edward.* 3. *cap.* 31. provided and prohibited, That no man ſhould be put to anſwere before the King, or his Councell, without preſentment before the *Iuſtices*, due *Proceſſe*, matter of *Record*, and *Writ* originall, according to the ancient *Lawes* of the Land.

Moreover, for the utter diſcouragement and beating downe of all ſuch as uſed to preferre unto the King any *Accuſations*, *Suggeſtions*, or *Petitions* againſt other men, further *Law* was given by the *Parliament*, 37. *Edw.* 3. *cap.* 18. That they ſhould be ſent with their *Suggeſtions*, before the *Chancellor*, *Treaſurer*, and the Kings *Great Councell*, and ſhould there put in *Sureties* of *Taliation*; that is, to incurre the ſame

paine that the other ſhould have, in caſe the *Suggeſtion* were found untrue. But one yeeres experience made that Point to be mollified, by the making of a new *Law*, 38. *Edward.* 3. *cap.* 9. which taking away the *Taliation*, gave order, That ſuch falſe *Suggeſtors* ſhould be impriſoned onely, untill they had both made full agreement with the partie moleſted, and *Fine* and *Ranſome* with the King.

And then, within a few yeeres after, alſo theſe accuſations grew ſtill more and more odious: So that it was decreed by the *Parliament*, 42. *Edw.* 3. *cap.* 3. That if any thing ſhould be done in that behalfe contrarie to the old *Law* of the Land, the ſame ſhould be void in the *Law*, and holden for errour.

Nevertheleſſe, theſe *Complaints* were yet againe afterwards thought meet

meet to be admitted: And thereupon the *Statute*, 17. *Rich.* 2. *cap.* 6. willed, the *Chancellor* alone ſhould have power, by his diſcretion, to award Damages againſt any perſon that ſhould make untrue ſuggeſtion againſt another, before the Kings Councell: The which Authoritie the *Chancellor* exerciſed many yeeres together, and untill at the length his *Writs* of *Subpœna* flew ſo thicke abroad, for matters determinable at the *Common Law*, that he alſo was charged to exceed the bounds of Authoritie delivered unto him: So that the *Parliament*, 15. *Hen.* 6. *cap.* 4. ſtayed the granting of the *Subpœna*, untill that Suretie were found, to anſwer to the partie grieved as well his Damages as expences, if that the matter could not be made good, that was contained in the Bill of Complaint againſt him.

Now by the toſſing of this Ball to and fro, betweene the *Councell* and *Commons*, it may at once very well appeare on the one ſide how hard, and rare a thing it is, for great men arrayed with high Authoritie, to containe themſelves within prefixed limits and pale of their power, and on the other ſide, how impatient the *Common Man* of this Realme hath alwayes beene, and without doubt yet is, and ever will be, to have his Cauſes determined either at the *Councell-board* without open hearing, or by abſolute authoritie, without preſcribed rule of ordinary proceeding; in either of which caſes he is very jealous of evill weight, and hard meaſure in the former, becauſe hee is perſwaded, that as his *controverſie* is not at the firſt drawne from the ordinarie tryall without the ſpeciall labour of his *Adverſarie*, and for great favour

vour extended to him: ſo hee feareth, that the ſame *good-will* being once planted, will continually poſſeſſe the roome, and will prove prejudiciall for him even to the end of his Suit and buſineſſe in the latter: becauſe, when he is to be judged by an irregular and uncontroulable *authoritie*, he findeth himſelfe utterly deſtitute of all *counſel* which way to turne him, ſince no man of *learning* can aſſure him before-hand what will be the *conſciences* or *diſcretion* of the *Iudges*: whereas the ſucceſſe may eaſily be fore-told in moſt of theſe other *Controverſies* which come to *determination* by *ruled Law* and *bounded juriſdiction*.

The Office of the King.

AND thus whileſt the *King* and his *Councell* embraced all manner of Complaints without exception,

It is the Office of the King, to deliver *Iuſtice*.

tion, the Subjects were thereby many times injuriously vexed, and put to travaile and charge: So as this repugnancie tooke root betweene them, and this *Antinomia* (or *Contrarietie* of *Law*) did spring out of the same: The which howsoever in appearance it may seeme great and irreconciliable, yet if recourse may be had to that *golden Mediocritie*, which both *Religion*, *Reason*, and *Law* doe maintaine in this point, the Controversie will soon be decided, and that without any derogating from the *Authoritie* of the *King* and his *Councell*; or prejudicating that lawfull *Freedome* of the Subject, which is claimed for him. For as it is inseparably annexed to the *Office* of a King, to be the *Iudge* of his people, and as he cannot any longer remaine *King* indeed, than he shall be readie to deliver *Iudgement* and *Iustice* unto them, which two things

Calvin in 3. Polit. 300. etc. 1. de Orat.

Bracton

Bracton ſaith, *Faciunt ipſam Coronam, nec ab ea ſeparari poſſunt*: So howſoever many Courts of ordinarie reſort ſhall bee eſtabliſhed by him, yet if either they have not, as I ſaid, *authoritie* to apply Remedie for all wrongs and diſeaſes, or if that *power* and *authoritie* which they have, may not enjoy her free courſe and paſſage, then muſt the King either exerciſe his *pre-eminent* and *royal Iuriſdiction*, or elſe muſt the injuriouſly afflicted be deprived of that helpe and remedie, which both the *Ordinance* of *God*, the *Dutie* of a *Kingly Iudge*, and the *common Law* of *Nature* and *Reaſon* doe afford unto him.

And on the other ſide againe, it is not to be doubted, but that if the ſubject were once utterly barred of this acceſſe to the perſon of the King in caſe of ſuch his diſtreſſe, he would cry out upon the ordinarie

Law, for the *Authoritie* whereof he ſo eagerly ſtriveth; and would not ſticke to lay to the Kings charge, that hee bare the *Sword* in vaine; that he kept not the promiſe of the *Great Charter*; *Nulli negabimus aut differemus Iuſtitiam*; and that hee violated the *ſolemne Oath* and *Vow* of his Coronation, *faciam fieri juſtitiam*.

The true moderation of Iuriſdiction abſolute.

WHat is then to be ſaid? Shall the King and his *Councell* open a Court for all ſorts of *Pleas* that be determinable by the courſe of *Common Law*? that were to ſet an *Anomy*, and to bring diſorder, doubt, and incertaintie over all: Shall no helpe at all bee ſought for at the hands of the King, when it cannot be found in the *Common Law*? that were

were to ſtop his eares at the crie of the *oppreſſed*, and would draw wrath and puniſhment from *Heaven*.

Betweene theſe two extremes, *Medio tutiſſimus ibis*, there lieth a meane, that will both uphold the *Majeſtie* of the King, maintaine the *Authoritie* of the *Common Courts*, and ſuccour the diſtreſſed *Client* in his greateſt neceſſitie. The which, to deliver it ſhortly, is this: If the ordinarie *Iuriſdiction* of the *Common Court* be not hindred by this infinite authoritie, but onely where either (as I ſaid) they have no *warrant* to receive the *Plea*, or where the *tenure* of their due proceedings is diſturbed; or where the matter is ſuch, as deſerveth to be heard upon the *higheſt Stage*, or the partie ſuch, as is unable to run the weariſome race of *ſolemne Law & Proceſſe*; or where ſome other rare, extraordinary, & weighty *conſideration* ſhall promote the ſame.

The

The maintenance of that Moderation.

AND this *Mediocritie* is maintainable, not onely by reaſon of the Kingly and judiciall *Office* (wherof I have oftentimes ſpoken) but alſo by the meaning of many *Statutes*, and by the continuall practice of our owne Kings.

For whereas the *Statute* 27. *Edw.* 3. *cap.* 13. did provide, that if any Merchant were robbed at the Sea of his goods, and the ſame came to the hands of any perſon within the Realme, the Merchant ſhould bee received, to prove the goods to bee his owne, either by the *Marke*, *Chartre party*, or *Cocket*, or by the teſtimonie of good Merchants; and thereupon they ſhould be delivered unto him, without any Suit at the *Common Law*. It was conſtrued, that the Remedie in ſuch a caſe

13. Ed 4. 9.

caſe was to be had at the hands of the King.

And therefore *Richard* the third, in the 2. yeere of his Reigne, ſate in perſon with his *Councell*, and heard the cauſe of a *Spaniſh* Merchant, that ſued before him upon the ſame *Statute*, and in the *Statutes*, 13. *Hen.* 4. *cap.* 7. 19. *Henry* 7. *cap.* 13. 31. *Hen.* 6. *cap.* 2. and others, doe make mention of the King, and his *Councell:* it is not ſo to be wreſted, as though they then erected any new authoritie, but onely had regard to that which was before.

Againe, in that the Commons of the Realme aſſented firſt in the *Parliament*, 28. *Edward* 1. *cap.* 5. that the *Chancellor* and *Chiefe Iuſtices* ſhould attend the King with their advice upon theſe Complaints: then in the *Parliament* 37. *Edward* 3. *cap.* 18. that theſe Petitioners ſhould put in Suerties of *Taliation*.

After

After that, in the *Parliament* 38. *Edward* 3. *cap.* 9. that they ſhould bee impriſoned till they ſatisfied the King, and the party of their falſe ſuggeſtions. And laſtly, in the *Parliament* 17. *Richard* 2. *cap.* 6. that *damages* onely ſhould be awarded againſt them.

It is in all theſe, I ſay, covertly confeſſed, that Complaints upon juſt *Cauſes* might be moved before the King and his *Councell*, and that the Commons of the *Realme* ſought onely to be delivered from *troubles* and *coſts* that grew by *unjuſt accuſations*: Which alſo is made plaine in that Petition of the *Commons* (of *Parliament* 1. *Henry* 6. *Numb.* 41. in the *Records*) where they prayed, That none ſhould be called before the *Chancellor*, or the Kings *Councell*, for any matter, but ſuch onely as had no remedie at the *Common Law*; and in ſuch caſe alſo, by the teſtimonie

monie of an *Indenture*, to be made betweene the *Plaintifes* and two of the *Iudges* of either *Bench*. And albeit the *Commons* have ſeemed in ſome other *Parliaments* generally, and without any exception, to impugne this Kingly *Prerogative*; yet here the Kings alwayes moſt gravely and conſiderately repelled that ſort of attempt: As, when in the *Parliament* begun at *Glocester*, 2. *Richard*. 2. the *Commons* made a Supplication to the King, That no *writ* out of the *Chancerie*, or *Letter* of *Privie Seale*, might be directed, to make any appeare before the Kings Councell, or others, to anſwer touching his *Free-hold*; but that the *Common Law* of the Land bee maintained, to have her full courſe: The King then anſwered, That he thought it not reaſonable, that he ſhould be reſtrained to ſend for his *Lieges* upon cauſe unreaſonable.

And

And albeit he did not purpoſe, that ſuch as were ſo ſent for, ſhould anſwer *Finalment* peremptorily touching their *Free-hold*, but ſhould be demanded for tryall thereof, as *Law* required it: *Purvie touts voyes que a Suits de partie, ou le Roy & ſon Counceil ſeroit creablement enformees, que (pur Maintenances, Oppreſſions, & autres outrages daſcun en pais) le Common Ley ne purra avoyer duement ſon courſe, que en tiel caſe le Counceil purra envior pur le perſon, pur luy metre a reſponſe de ſa miſpriſion: & à leur bon diſcretion de luy compeller à faire ſuertie perſerement, & in autre maner de ſon bon partie, & que il ne ferra maintenance ne autre riens que purra diſturber le courſe del Common Ley in oppreſſion du peuple.* Provided alwayes, (ſaith he) That at the *Suit* of the partie, where the King and his Councell ſhall be credibly informed, that (becauſe of *Maintenances*,

nances, Oppreſſions, or other *Outrages* of any perſons in the Countrey) the *Common Law* cannot have her courſe; in ſuch caſe, the Councell may ſend for the partie upon whom the *Complaint* is made, to make his anſwer for his contempt: and furthermore, by their good diſcretion to compell him to finde *Sureties* by *Oath*, or in other manner, for his good behaviour; and that he ſhall not by himſelfe, or by any other, commit *Maintenance*, or other thing, which may diſturbe the courſe of the *Common Law*.

And likewiſe, when as the *Commons* in the *Parliament* holden at *Weſtminſter* in the 13. yeere of the ſame *King*, did pray, That upon pain of a forfeiture, the *Chancellour* or *Councell* of the *King* ſhould not, after the end of the *Parliament*, make any *Ordinance* againſt the *Common Law*, or the ancient *Cuſtomes* or *Statutes*

of

of the Land; nor make any *Writ* called *Quibuſdam certis de cauſis*, for the anſwering in any ſort, where *Recoverie* is given by the *Common Law*, but that the *Common Law* ſhould run wholly amongſt all the people; and that no *Iudgement* given ſhould be adnulled, without due proceſſe of the *Law*. The King then anſwered thus: *Soit uſe come ad eſtre uſe devant ſes heures iſſint, que la Regalie du Roy ſoit ſauve; car le Roy voit ſaver ſa Regalie come ſes progenitors ont fait devant luy: & ſi aſcun ſoyent grieve, monſtre en ſpecial, & droit luy ſerra fait.* Let it be uſed (ſaith the King) as it hath beene uſed before this time, ſo as the Regalitie of the King be ſaved; for the King will ſave his Regalitie, as his Progenitors have done: And if any perſon doe finde himſelfe grieved, let him ſhew it in ſpecialtie, and right ſhall be done unto him.

Moreover,

Moreover, where in the *Parliament* holden the fourth yeere of King *Henry* the fourth, the *Commons* complained, That notwithstanding the said *Statute* 25. *Edw.* 3. *cap.* 3. many of the Kings Liege people were unquieted; some, by *Writs* of *Subpœna*, issuing upon false suggestions out of the *Chancerie*; some, by that *Writ* out of the *Exchequer*, called *Quia datum est nobis intelligi*; and some, by *Letters* of *Privie Seale*: and therefore prayed the King, That the partie accused might be received, to traverse such surmises, and to trie them by an *Enquest*; which also if they found for him, might give him *Damages*, with regard of his *Slander*, *Costs*, and *Travaile*; and that the *Accuser* should not onely make *Fine* and *Ransome* to the King, but also endure *imprisonment* by the space of a yeere.

The Kings anſwer then was, That hee would give in charge to his *Officers*, that they ſhould abſtaine more than before-time they had, to ſend for his *Subjects* in that manner: But yet (ſaith he) it is not our intention, that our *Officers* ſhall ſo abſtaine, that they may not ſend for our *Subjects* in matters and cauſes neceſſarie, as it hath beene uſed in the time of our good Progenitors.

Finally, when as in the *Parliament* 3. *Hen.* 5. the *Commons* eftſoones complaining againſt thoſe *Writs* of *Subpœna*, and *Quibuſdam certis de cauſis*, and *Quia datum eſt nobis intelligi*, which iſſued of matters determinable at the *Common Law*, and that were (as they ſaid) firſt deviſed in the time of King *Richard* the ſecond, by the ſubtletie of *Ioh. Waltham*, the *Biſhop* of *Salisbury*: And therefore prayed the

the King, that it might be enacted, That thoſe *writs* ſhould be enrolled in the Courts from whence they proceeded, and thereby made open to the *Defendant*, that hee might thereupon have his *Action* of *Debt* for fortie pounds againſt him that ſhould purſue any ſuch. The anſwer was; *Le Roy s'adviſera*, The King will be adviſed of it: The which is the ſame phraſe whereby the Kings of this Realme doe uſe to denie their aſſent to any *Act* that hath paſſed the *Lords* and *Commons* in *Parliament*.

All which *Reſcripts* and *Anſwers* of the Kings, doe fully diſcloſe that *Moderation* which I ſeeke; that is, That the courſe of the *Common Law* be commonly holden; That men bee not cauſeleſly convented before the King, and his *Councell*; and that the proceeding at the *Councell-Board*, be not upon every

light ſuggeſtion, nor to determine finally concerning *Free-hold*, or *Inheritance*. And yet, that upon cauſe reaſonable, upon credible information, and that in matters neceſſarie, the Kings *Regalitie*, *Prerogative*, or *Iudiciall Power*, in ſending for his *Subjects*, be maintained, as of right it ought, and before hath beene uſed. The which thing (as you ſee) is ſo farre from impeaching the free courſe of the *Common Law*, that it not onely concurreth with her, and removeth all impediments of her proceeding, where ſhee hath the *Iuriſdiction*: But alſo, by the plenitude of the Royall *Power*, ſupplyeth her wants, and defects, whereſoever ſhee is not authorized to deliver the helpe of *Iuſtice*.

Examples of that Moderation.

ACcording to this moderation, King *Edward* 1. ſeeing that *Bogo de Clare* was diſcharged of an *accuſation* put againſt him in *Parliament*; for ſome imperfections of forme that were diſcovered in the *Complaint*, commanded him nevertheleſſe to appeare before himſelfe, *ad faciendum & recipiendum quod per regem & ejus conſilium fuerit faciendum*, and ſo proceed to a reexamination of the whole cauſe, *Anno* 18. *Edward* 1.

And according to this *Moderation*, King *Edward* 3. in the 41. yeere of his Reigne, at the *complaint* of *Elizabeth*, the widdow of *Nicholas Audley*, to appeare before himſelfe and his *Councell*, (*viz.*) the *Chancellor*, *Treaſurer*, and *Iuſtices*, and other *Sages*, and upon their ſubmiſſi-

on to ſtand to the ordinance of him, and his *Councell*, he determined a controverſie betweene them, touching the aſſurance of certaine Lands contained in the Covenants of her marriage. *Rot. clauſo de Anno.* 41. *Edward* the third.

According to this *Moderation*, King *Henry* 5. in a *Suit* before him and his *Councell*, betweene *William Goddard* and his Wife, *complainants* againſt *Hugh Straule* for the title of the Mannor of *Serrie*, and St. *Laurence*, in the Iſle of *Tannet* in *Kent*, tooke order for ſequeſtring the profits, till the right were tryed; as well for the avoiding of the breach of the peace, as for the prevention of waſte and ſpoile. *Rot. Paten. Anno 6. Henry 6.*

According to this *Moderation*, when *Robert Danvers*, a Counſellor at the *Law*, had exhibited his Bill to King *Henry 6.* and his *Councell*, in

the

the 11. yeere of his Reigne, praying thereby, That foraſmuch as he was defamed with the ſuſpicion of raiſing a *Record*, of an *Inquiſition* after the death of *Iohn Saint-Iohn*, the matter might be examined, aſwell for the behalfe of the King, as for the declaration of his owne innocencie. The requeſt was granted unto him, and upon proofe, that *William Brocket*, a Clarke of the Exchequer, had made the razure, *Brocket* was fore-judged to have acceſſe for writing in any of the Kings Courts of *Record*, and *Danvers* was acquitted of all fault; with order, that his *Declaration* of his innocencie ſhould be inrolled.

The like whereof, for the *Declaration* of the innocencie to the Lord *Ralph Cromwell*, *Chamberlaine* to the ſame King, made by him before the Kings *Councell*, againſt the villanous accuſation of one *Robert Colli-*

ſon, Prieſt, for ſuſpition of Treaſon, may you read in *Rot. Paten. de Anno* 31. *Henry* 6.

According to the ſame *Moderation* alſo, the *Counſell* of the ſame King proceeded againſt *John Foard*, a *Mercer* of *London*; and puniſhed him for the fraudulent packing of 26. ſtone of Wooll amongſt certaine Broad Cloathes, that he ſold to a *Dutchman*, which did tranſport them; *Rotulo clauſ. de Anno* 17. *Henry* 6.

According to this *Moderation*, the ſame King likewiſe commanded the *Iuſtices* of his *Bench* to ſtay the *arraignment* of one *Verney* of *London*, till they had other Commandement from him and his *Counſell*: Becauſe *Verney* being indebted to the King, and others, practiſed to be indicted of *Felony*; wherein he might have his *Clergie*, and make his purgation, of intent to defraud his

his Creditors; 34. *Henry* 6. *Rotulo* 37. *in Banco Regis.*

According to this *Moderation*, King *Edward* the 4. and his *Counſell* heard the *Cauſe* of the *Maſter* and *poore Brethren* of the *Hoſpitall* of St. *Leonards* in *Yorke*; complaining, That Sir *Hugh Haſtings*, *Iohn Wombell*, and others, withdrew from them a great part of their living, which conſiſted chiefly upon having of a Thrave of Corne of each Plow-land, within the Counties of *Yorke*, *Weſtmerland*, *Cumberland*, and *Lancaſhire*; and for the which, they being very poore men, were not able to ſue the redreſſe at the *Common Law*, *Rotulo Paten. de Anno* 8. *Edward* 3. *part* 3. *memb.* 14. And yet had they of that *Hoſpitall* a ſpeciall Act of *Parliament* made for them, to give them *Action* in that very Caſe, 2. *Henry* 6. *cap.* 2.

A Thrave hath 24. ſheaves, as a Stack hath 12.

Accor-

See Holling. Cron. p. 344 fur Records de Burie 1. Ed. 3.

According to the ſame *Moderation*, the ſame King and his *Councell* made a Decree for *Richard* the *Abbot* of Saint *Edmonds-Bury*, againſt *Walter Thurſtone*, *William Sigo*, and others, the inhabitants of *Bury*, whom he there puniſhed, for turbulent elections of their *Aldermen*, *Conſtables*, and other *Officers*; whereas they had no Corporation at all, nor any other *Head*, beſides the *Abbot*. *Rot. Paten. Anno* 20. *Edward* 4. *Part* 2.

According to the ſame *Moderation*, King *Henry* 7. and his *Councell* in the firſt yeere of his reigne, heard the *Cauſe* of *Sanctuarie* at *Culvam*, claimed for Treaſon by *Humfrey Stafford*, under colour of the *Priviledges* of the *Abbey* of *Abbington*; and gave order, that the *Iudges* ſhould deliberate thereupon; that *Stafford*, with his learned *Councell*, ſhould be heard before them, and

that

that the *Abbot* ſhould be called to ſhew his *Priviledges*.

In which yeere alſo, a *Privie Seale* was awarded to the *Maior* of *Briſtow*, *Ad faciendam Iuſtitiam*; to *Ferdinando de Saint Iago*, a *Spaniard*; or otherwiſe, to appeare *coram Rege*.

And likewiſe, the ſame yeere the Kings *Councell* decreed, that *Margery* and *Florence Becket* ſhould ſue no further in their *Cauſe* againſt *Alice Radley*, widdow, for Lands in *Wolwich*, and *Plumſtead*; for ſo much as that matter had been heard firſt before the *Councell* of King *Edward* 4. After that, before the *Preſident* of the *Requeſts* of that King *Henry* 7. and then laſtly, before the *Councell* of the ſame King. Preſident of the Requeſts.

And to conclude, I have ſeene it regiſtred, That the ſame King *Henry* the ſeventh, did perſonally ſit in *Iudgement*, with his *Councell*, in the *Star-chamber*, twelve ſeverall times within

within the compaſſe of that firſt and ſecond yeere of his Reigne; where according to his *moderation*, the *Plaintiffe* was commonly bound either alone, or with *Sureties*, to juſtifie the matter of *Complaint*: or otherwiſe, to pay *Coſts* and *Expences* of the *Defendant*; and in default of ſuch proofe, was many times committed to priſon for his wrongfull vexation. The *Defendant* likewiſe, moſt commonly, gave *Bond* for the *Peace*, or for the *Good-abearing*, as the caſe required, to prevent all danger of force, and diſturbance of the *Common Law*; whereunto, for tryall, they both were oftentimes diſmiſſed.

But amongſt other things which it hath chanced me to ſee, that order which the *Councell* during the minoritie of *Henry 6.* did ſet downe to be obſerved amongſt themſelves, is no leſſe memorable than ſerviceable

able for this purpoſe: The which, although it doe containe ſome Articles not altogether proper to this Argument; yet for as much as it hath many points well tempered for the maintenance of this *Moderation*, and the ſame ſo interlarded with the reſt, that it ſhould be violent to diſſever them; I will ſet it downe wholly, as it came to my hands.

Order taken for the Councell, during the Minoritie of King *Henry* the ſixt.

1 THat *the Lord of* Bedford, *or* Gloceſter, *nor other of the* Councell *ſhall behote any favour, but that each* Bill *and* Suit *ſhall be ſeene by all the* Councell, *and by them to have reaſonable* Anſwer.

2 That

2 *That in the plaine* Terme *the* Councell *ſhall one day in the Weeke intend to the reading and anſwering of* Bills; *which* Anſwer *ſhall be endorſed on the* Bill *by the* Clarke *of the ſame* Councell, *and on the* Friday *declare it to the partie ſuing, unleſſe the great and notable Cauſes of the* Realme *let it.*

3 *All* Bills *comprehending matters terminable at the* Common Law, *ſhall be remitted thither, unleſſe the diſcretion of the* Councell *feele too great might on the one partie, and unmight on the other, or cauſe reaſonable to move them.*

4 *No* Councellor *take upon him to be partie in any matter, there to be ſped, but if it touch himſelfe; and then be not to be preſent, while it is in hearing.*

5 *Each* Councellor *ſhall have full freedome to ſpeake what he thinketh, in the matters demanded there, and none*

other

orher of the ſaid Councell ſhall conceive indignation; therefore alwayes due reverence kept to every eſtate and perſon.

6 For avoiding of anger, and indignation of perſons out of the Councell, by diſcoverie of things ſpoken, and treated there; no perſon whatſoever ſhall abide in the Councell, while matters of the Councell be treated, ſave onely the Councellors ſworne.

7 No matter ſhall be aſſented, but at the leaſt there aſſent thereunto foure Councellors, and an Officer, aſſembled in the forme of Councell, and at a place appointed; and that ſhall not ſuffice, unleſſe they make the more part of the number then preſent in Councell.

8 No Bill be ſped, but in place ordained for Councell, and the Councell being there in forme of a Councell, and the Bill to be read there firſt before them all, whereunto every man ſhall

ſhall ſingularly ſay his advice; and then it may bee ſubſcribed by the Lords *there, or in any other place, where the* Clarke *of the* Councell *ſhall bring it himſelfe unto him.*

9 *The correction or removing of any* Councellor, *or great* Officer *of the King, ſhall proceed of the advice and aſſent of the more part of all thoſe that had been appointed of the Kings* Councell.

10 *All matters touching the King, ſhall be preferred to all other, both in* Parliament *and* Councell.

11 *To* Benefices *and* Offices *becomming void, and belonging to the Kings diſpoſition, thoſe ſhall be preferred that have ſerved the King or his predeceſſors; ſo that there be found among them perſons able thereto.*

12 *Out of the* Terme-time, *nothing ſhall be ſped in this* Councell, *but ſuch things for the good of the King, and the Land, that aske neceſſarie ſpeed,*

and

and may not godly be abidden unto the Terme-time.

13 *If the* Opinions *of my Lord of* Bedford, *or of* Gloceſter, *fall on the part of the leſſe number, and yet doe move the greater number forthwith to condeſcend; then ſhall the matter dwell in deliberation, till the next day; at which every man ſhall ſay his reaſon, and then ſhall ſtand the* opinion *of the more part in number: and if the number be equall, then ſhall that partie on which the Lord of* Bedford *or* Gloceſter *is in, be holden for the more partie.*

14 *Where the Kings* Prerogative, *or* Free-hold, *is in queſtion, there the Kings* Iudges *ſhall be called, and their* names *and* advices *ſhall be entred of* Record.

15 *The* Clarke *of the* Councell *ſhall be ſworne, That each day of ſitting, hee ſhall cauſe the* Bills *of the pooreſt* Suitors *to be firſt read, and anſwered, ſo neere as he can aske, or enquire; and*

the Kings Sergeant to be ſworne, to give Counſell without Fee, to ſuch as ſhall be accepted for poore, upon paine to be diſcharged of their Offices.

16 No Lord of this Councell ſhall wittingly receive, cheriſh, hold in houſehold, nor maintaine any Piller, Robber, Oppreſſor, Man-ſlayer, Felon, Outlaw, Raviſher, unlawfull Hunter, open miſdoer, or other, openly named or famed for ſuch, till his innocencie be declared: Nor ſhall take any other mans Cauſe, or Quarrell, into favour, by word, deed, or meſſage, by giving Liverie, or otherwiſe, by any colour, or occaſion of feoffement, gift, or Deed of Lands, or moveables; nor ſhall conceive indignation againſt any Iudge, or Officer, for doing his Office in forme of Law; and ſhall cauſe their ſervants, and all others in their Countries, to do the like.

17 No Lord of this Councell ſhall by colour, or occaſion of feoffement,

or gift of Lands, or other goods, receive, or take by himſelfe, or by any other, to his uſe, any thing that ſhall ſtand in debate, or demand; without it be firſt ſpoken of, and committed to the Kings Councell, *and by the more part of them conſidered to be lawfull to doe.*

18 *None of the ſaid* Councell *ſhall by himſelfe, or by any other, take any* gift, *for favour, or furthering of any perſon, or matter; upon paine to reſtore the double to the partie, ſixe times as much to the King, and to be forbidden to ſit in the ſaid* Councell, *till the King be otherwiſe adviſed.*

Thus having made it clearely to appeare, who is, and ought to bee *Iudge* of theſe *Complaints*; let us now alſo diſcover what is, and hath beene the moſt uſuall Place for the exhibition of them.

The third part, touching the place.

IT muſt be true, that the *King* and his *Councell* are not to bee tyed to any one place, ſeeing that the place it ſelfe neither addeth, nor derogateth to, or from their *authoritie*; and there be many cauſes of remove and change, from place to place: But yet, even as the *Palace* at *weſtminſter* hath evermore beene reputed the chiefe Royall Seat of the Realme, as being moſt frequented with the perſonall preſence of the Kings, and honoured with the Solemnity of *Coronations* and aſſemblies of Eſtates in Parliament; ſo the *Councell-Chamber* of that *Palace* hath obtained that dignitie, to beare a name above all others, and hath beene of long time called the *Star-Chamber*.

The Star-Chamber is the uſuall place.

IT is ſaid in the *cloſe Roles de Anno* 41. *Edw.* 3. That the ſame King, upon the fourth day of *May*, in the fortieth yeere of his reigne, receiued the *Complaint* offered by *Elizabeth*, the widdow of *Nicholas Audley*, whereof I have ſpoken; and thereupon cauſed *Iames Audley* to appeare before his *Councell*, (*viz.*) his *Chancellor*, *Treaſurer*, *Iuſtices*, and other *Sages* aſſembled, *En la Chambre des Eſtoyers pres de la reſceipt al weſtm.* in the *Chamber* of the *Stars* neere the *Receipt* at *weſtminſter*: And the *Roll*, of *Patents de Anno* 2. *Richard*, *part* 1. *membr.* 28. hath the expreſſe name of the *Starre-Chamber*.

Furthermore as it appeareth by *Record*, that the ſame purgation

of *Robert Danvers*, which I have before mentioned, was made the 20. of *Iune*, *Anno* 11. *Hen.* 6. *in Camera Stellata coram Consilio Regis.*

So was that *fraud* aforesaid of *Iohn Foard*, detected and punished in the *Star-chamber*, within the Kings *Palace* at *Westminster*; as by the *Close Roll de Anno* 17. *Hen.* 6. it is recorded.

It is moreover noted, That upon the 28. day of *November*, 28. *Hen.* 6. the Kings *Councell* being assembled in the *Councell-House*, called the *Star-chamber* at *Westminster*; *William Talbois*, of *Southkind* in *Lincolnshire*, came accompanied with many riotous persons, arrayed in warlike sort, and attempted to have slaine the said *Ralph*, Lord *Cromwell*, of whom I told you before, being one of the Kings *Councell*, and then sitting in *Councell* there, in the Kings *Palace*.

I finde likewiſe, That upon the 21. day of *November*, 32. *Hen. 6.* *Richard*, the Duke of *Yorke*, being called before the Kings great *Councell* by *Privie Seale*, in the *Star-chamber* at *weſtminſter*, complained, That his learned *Councell* was withdrawne from him; and therefore prayed, they might without impediment reſort unto him againe: Whereunto the Lords aſſented, and commanded, that the ſame their *aſſent* ſhould be entred amongſt the *Acts* of *Councell.*

It appeareth alſo, That upon the firſt day of *Eaſter-Terme*, 35. *Hen. 6.* at *Weſtminſter*, in the *Star-chamber*, before the *Councell* of the King, a *writ* of *Proclamation*, awarded by them againſt *Iohn* the Duke of *Norfolke*, was adnulled; becauſe the firſt *Writ* iſſued upon the *Statute* of *Riots*, made 31. *Hen. 6. cap. 2.* and contained in it ſelfe no mention

of *Riots*, and other the *Contents* of that *Statute*.

After the time of King *Henry* the ſixth, this place was frequented for the like ſervice by King *Edward* the 4. who, in the eighth yeere of his Reigne, ſate there perſonally in *Councell*, attended with the *Archbiſhop* of *Yorke*, the *Biſhop* of *Durham*, *Bath*, and *Rocheſter*, and the Earle of *Warwicke*, &c. there decreed that *Cauſe* of the *Maſter* and *Brethren* of Saint *Leonards Hoſpitall*, of which I have uſed ſome mention before.

And in the 20. yeere of the reign of the ſame King, was that other *Decree* publiſhed in the *Star-Chamber*, which I noted before to have been made for the *Abbot* of Saint *Edmonds-Bury*, againſt the inhabitants of the ſame Towne. Of which King alſo, the *Chiefe Iuſtice*, 1 *Henry* 7. 3. reporteth, That he ſate and conferred with his *Nobility* in the *Star-Chamber*,

Chamber, about the Execution of ſundry *Statute-Lawes*; for the better obſervation of which, hee there tooke the Corporall Oathes of them all.

But to omit that of *Rich.* 3. and ſundry other *Records* of other times, concurring in the ſame teſtimonie, thoſe twelve ſeverall ſtately *Seſſions*, honoured with the Royall preſence of King *Henry* 7. and ſometimes with almoſt forty of his *Councell*, in the 1. and 2. yeeres of his Reigne, whereof I ſpake, and ſundry others performed by his *Chancellors* and *Councell* in the ſame place, doe aſſuredly teach, that it was the ordinarie *Councell Chamber* of the King, whenſoever he and his Court did lye, and ſojourne at his *Palace*, in *Weſtminſter*, frequented no leſſe for deliberation on matters of eſtate, than for decreeing extraordinarie *Suits* and *Cauſes* of *Complaint*.

And

And I thinke it no doubt, but that *Iudge Shard*, which 28. *Lib. Assis. Pl.* 52. openeth the severall significations of the words *Coram nobis*, in the Kings *writs*, meanes this place, when hee saith, that *Coram nobis*, without any more, requireth an appearance before the *King* and his *Chamber*, even as *Coram nobis ubicunque, &c.* commandeth in the *Kings Bench, &c.* and *Coram nobis in Cancellaria* willeth it before the Lord *Chancellour*.

The Name of Star-chamber.

BVt from whence this place first purchased the name of *Star-chamber*, there may be divers conjectures; one, by derivation from the old *English* word *Steoran*, which signifieth to steare, or rule, as doth the *Pilot* in a *ship*; because the *King* and *Councell* doe sit here, as it were

at the *Sterne*, and doe governe the *Shippe* of the *Common-wealth*: Then, of the *Latine* word *Stellio*, which betokeneth that *ſtarry* and *ſubtile Beaſt*, of whoſe name the fault of craftie Cozenage is borrowed by the *Civillians*, which they call *Crimen ſtellionatum*, becauſe the *Sinne* is puniſhed in this Court by an extraordinary *paine*, even as it was in the *Law Civill*.

Laſtly, becauſe happily the Rooſe thereof was at the firſt garniſhed with gilded *Stars*, as the *Roome* it ſelfe is *ſtarry*, or full of *Windows* and *Light*; in which reſpect, ſome of the *Latine Records* name it *Camera Stellata*; the *French*, *Le Chamber des Eſtoyels*; and the *Engliſh*, the *Starred Chamber*; as you may obſerve by that I have ſpoken before.

The

The ancient usage of the Starre-Chamber.

BVt leaving the choyce of theſe, as alſo all further conjecture therein, to other men; I will proceede to ſet forth the uſage of proceeding in this place, before the making of the *Statute* 3. *Hen.* 7. *cap.* 1. the which, ſome men (but much deceived) doe take to have laid the firſt ſtone of this farre more ancient and ſtately Erection.

Vpon *Complaint* exhibited, the Plaintiffe either came freely, or was ſent for by *Corpus cum cauſa*, if hee were in priſon: The Defendant was ſummoned, or called in, either by *writing*, or *Meſſenger*; by *Writing*, as by the Kings owne *Letter*; or by his *Privy Seale*, directed under a peine to the partie ſelfe,

ſelfe, or to the *Sheriffe*, to take *Sureties* for his appearance; or by *Letters miſſive*, from the *Councell*; and if hee made default, then upon *Affidavit* made, by an *Attachment* and *Proclamation* of *Rebellion*, if the caſe require it. By monition of a *Meſſenger*, as by a *Sergeant* at *Armes*; who, upon contempt of former *Proceſſe*, or upon doubt of the flying of the partie, or for his being neere at hand, or in reſpect of the hainouſneſſe of the fact, was many times addreſſed to ſeize upon the Defendant, and to bring him into the Court.

The *Pleading* was by *Bill*, *Anſwer*, and *Replication*, as by the *Records* of theſe two Caſes of S. *Edmonds-Bury* and S. *Leonards Hoſpitall*, before mentioned, I doe plainely find.

The *Hearing* was aſwell by examination upon *Oath* of the *Defendants* them-

themſelves, as of their witneſſes; againſt whom the manner was toward compulſaries for their appearance, if the party would depoſe their teſtimony to be neceſſary for him, and if their ability of body would beare the travaile: if not, then were they, in pitty of their impotency, examined at home.

The *Determination*, was by *Decree*, which paſſed by the aſſent of the more part, delivering their *opinions* ſingularly; whereby either the *Cauſe* was decided in the *Court*, or diſmiſſed to *tryall* at the *Common Law*; or otherwiſe, upon default of the *plaintiffe* (being proclaimed, or called thrice at the *Councell doore*) the *Defendant* was quite *diſmiſſed*, with his *coſts* and *expences*.

The

The Officers of the Star-Chamber.

THe *Officers*, or Miniſters that I finde, were then the *Vſher*, the *Serjeant* at *Armes*, the *Atturneyes*, and the *Clarke*. The *Vſher*, for the keeping of the *roome*, the proclaiming of ſilence, the calling of names, and other baſe *ſervices*, and the *Serjeant*, as well to beare the *Mace*, for the honor of the *Lord Chancellor*, as to *arreſt* and bring ſuch as he was commanded.

Touching the *Atturneyes*, I wot not whether their *Service* might then be called a ſtanding *office*, or no, becauſe they were at large, ſome two or three at once being received, to follow for one *Clyent*; in ſo much, as there were above thirtie ſeverall *perſons* imployed thereabouts, during onely the firſt and ſecond yeares of *King Hen.7.*

The

Clarke of the Star-Chamber.

The *Office* of the *Clarke* of the *Councell*, was to *Take*, *Endorse*, *Enter*, *Keepe*, and *Certifie* the *Bills*, *Pleadings*, *Records*, *Rules*, and *Decrees* of the Court. And as it is not to bee doubted, but there hath beene from time to time, a *Clarke* of the *Councell*, considering that such a Court could not be without the service of such a *Minister*, (albeit happily his *authoritie*, in examining of *Witnesses*, taking of *Affidavits*, and admitting men by *Attorney*, was by little and little enlarged): So I doe not finde it expressed, who was the *Clarke* during the minority of *King Hen. 6.* or at any time before it; For the very first of whose name I have read, was *Thomas Kent*, a *Doctor* of the *Law*, to whom King *Henry* the sixt, by his *Letters Patents*, dated the fifteenth of *July*, in the two and twentieth yeare of his raigne, gave both that Office for his life, calling him

him *Clericum Consilii nostri*, and the *Office* of the *Secundarie* of the *Privie Seale*; with *wages*, of a hundred pounds by yeare; and with *power*, for reasonable cause of absence, to make his sufficient *Deputie* therein. After him, whether immediately or no, I have not to affirme, because that I suspect that one *Langport* was betweene, in the first yeare of King *Henry* the seventh; *Iohn Bladswell*, a *Doctor* of the *Lawes* also, was made *Clarke* of the *Councell*, and exercised the same *Office*: The degrees of which two men, whereof the first was afterwards sworne of the *Councell*, doe set forth the *dignitie* of the *place*, being (as I suppose) the best *Clarkeship* of this *Land*, unlesse you will call the Master of the *Rols* a *Clarke* againe; as some former *Statutes* are wont to name him.

And these bee the onely named men of that *place*, with whom I have

yet met, before that *Statute* made in the third yeare of King *Henry* the ſeventh.

After whom, that I may ſhortly *ſummon* them all, there ſucceeded in the ſixt yeare of King *Henry* the ſeventh, *Robert Riden*; in the firſt yeare of King *Henry* the eight, *Iohn Mcutis*, *Secretarie* for the *French*; and in the fourth yeare of the ſame King, *Richard Eden*: during one time of whoſe ſickneſſe, *Thomas Eliot* held the Place: in the 22. yeare of which King alſo, the *Office* was upon a ſurrender, granted jointly to that *Richard Eden*, and *Thomas Eden*, which laſt man forthwith exerciſed the ſame alone. And in the fifth yeare of King *Edward* the ſixt, it was granted in reverſion, after the death of that *Thomas Eden*, to *Thomas Marſh*; to whom it fell in poſſeſſion in the ninth yeere of her Majeſtie that now is: In like reverſion, after whoſe

whose death, it was likewise granted to *William Mills*, mine ancient favourer, a man trained up from his youth in the services of that Court; who tooke it in possession the fifteenth yeare of her Highnesse Reigne, and now holdeth: By whose good *labours* and *friendships* also, I was the better enabled to write some part of this present Discourse.

The Authoritie of the Star-Chamber by new Statutes.

BVt having now runne through the ancient usage of this Court, there remaineth a consideration of that *Statute* made in the third yeere of King *Henry* the seventh; by which the persons therein named, are authorised by their discretions, to examine certain offences, & the same to punish, according to the effect of the

Statute-Lawes, the very words whereof be these.

The King our Soveraigne Lord remembreth, how by unlawfull Maintenances, giving of Liveries, Signes, and Tokens, and by Retainders, by Indentures, Promises, and other Writings, or otherwise, Embraceries of his Subjects, untrue demeaning of Sheriffes, in making Pannels, and other untrue Returnes, by taking of Money by Iuries, by great Riots, and unlawfull Assemblies, the policie and good rule of the Realme is almost subdued; and for not punishing those inconveniences, and by occasion of the premisses, nothing or little may be found by inquirie, whereby the Law of the Land in execution may take little effect, to the encrease of Murthers, Robberies, Perjuries, and unsuretie of all men living,

liuing, and losses of their lands and goods, to the great displeasure of Almightie God: Therefore it is ordained, for reformation of the premisses, by authoritie of the said Parliament, That the Chancellor, and Treasurer of England for the time being, and Keeper of the Kings Privie Seale, or two of them (calling to them a Bishop, and a Temporall Lord, of the Kings most honourable Privie Councell, and the chiefe Iustices of the Kings Bench and Common Pleas for the time being, or other two Iustices, in their absence) upon Bill, or Information, put to the said Chancellor for the King, or any other, against any person, for any misbehaviour aforesaid, have authoritie to call before them, by Writ or Privie Seale, the said misdoers, and them, and others, by their

discretions, by whom the truth may be knowne, to examine: and such as they finde therein defective, to punish them after their demerits, after the forme & effect of the Statutes thereof made, in like manner and forme as they should or ought to be punished, if they were thereof convict after the due order of the Law, Anno 3. Hen. 7. cap. 1.

This *Statute*, as some have thought, was made for the restraint of that absolute *authoritie*, which beforetime was exercised by the Kings *Councell*: So, as after the making hereof, they were to take knowledge of these few *Causes* onely, and of none others.

But I doe rather expound it by way of enlargement of their *Iuridicall authoritie*: for insomuch as there are not in it any words prohibitorie touching the former manner of proceeding;

ceeding, and the ſcope of this *Law*, is to have thoſe *offenders* convicted by other meanes than by order of *Law*, as they were before; I gather thereby, that the *Statute* giveth an *additament* of this ſort: (*viz.*) That whereas before-time the King and the Lords of his *Councell* did not admit any *Complaint*, but ſuch onely as carried within it a reaſonable ſurmiſe of maintenance of their *Iuriſdiction*; for the proofe whereof, alſo the *Plaintife* ought by the *Statute* 15. *Hen.* 6. *cap.* 4. to give *Sureties*, as I have before ſhewed. Now by this new *Statute*, over and beſides that ancient *authoritie*, onely theſe three of the *Councell*, (*viz.*) the *Chancellor*, *Treaſurer*, and *Keeper* of the *Privie ſeale* (uſing the aſſiſtance of ſome *others* thereunto appointed) were enabled to *heare* & *determine* ordinarily of theſe 8. *offences*, and that without any manner of ſuch ſuggeſtion, or

ſurmiſe at all: And that both King *Henry* the ſeventh, and King *Henry* the eight, did many yeeres after the making of this *Statute*, ſometime in perſon, and very often by their *Councell*, practiſe that by former *Iuriſdictions* in the *Star-Chamber*, without any help of this new *Law* & *Statute*, it doth moſt certainly appeare by the Bookes of *Entries* kept there; which is a true *Ephemeris* or *Iournall* of the *Acts* of the *Court*.

But for as much as they of the *Parliament* holden in the 21. yeare of King *Henry* the eight, *cap.* 20. eſpyed ſome defects in this *Statute* of *Henry* the ſeventh, they did ſupply the ſame after this manner following; *viz.*

The Chancellor, Treaſurer of England, and the Preſident of the K. moſt honorable Privie Councell, attending upon his moſt honorable Perſon, for the time being,

ing, & the Keeper of the K. Privie Seale, or two of them, calling unto them one Bishop, and one temporall Lord of the K. most honorable Councell, and the two chief Iustices of the Kings Bench, & the Common Pleas, for the time being or other two of the K. Iustices in their absence, upon any Bill of Information hereafter to be put in: The Chancellor of England, Treasurer, President of the K. said most honorable Councell, or Keeper of the K. Privie Seale for the time being, for any mis-behaviour before rehearsed, frō henceforth have full power and authoritie to cal before them by Writ of Privie Seale, such misdoers, and them, and other, by their discretion, by whom the truth may be knowne, to examine: And such as they shall find defective, to punish thē after their demerits, after the

forme

forme and effect of the said former Statute, and of all other Statutes thereof before made, & not repealed, & expired, in like manner and forme, as they should or ought to bee punished, if they were thereof convicted after the due order of the Kings Lawes.

By which latter Statute these things following are brought to passe, *viz.* first, that the *President* of the Kings *Councell* is hereby added to that *triumvirate*, and is made one of the *Iudges* of them.

Secondly, a doubt is here taken away, that might be moved upon the words of the first *Statute*, namely, whether the *Bishop*, the temporall Lord of the Kings *Councell*, and the *Iusticers* named in that *Statute*, were *Iudges* equall in his *Authoritie*, with the other three great *Officers*; or else whether they were but onely assistant unto them with their advice:

vice: For here, in this latter *Law* the full *authoritie* is given onely to thoſe three, and the *Preſident*; ſo as the reſidue are to be called onely for their advice: But yet ſo, that the proceeding is erroneous, if either the other foure doe not call them, or doe not heare their advice when they be called.

Laſtly, the Bill, or information, ought by this latter *Statute* to bee put in generally, that is, to the King, as it was wont to be: Whereas, by the ſtrict words of the former Act, the ſame was to have been exhibited to the Lord *Chancellour*: And thus by the benefit of theſe two *Statutes*, the judiciall handling of theſe eight offences which before did proceed, as I partly touched, either by way of Indictment, or Action, may now be performed without any *Enqueſt* or *Verdict*, even by the onely *examination* either of com-

competent witneſſes of the parties themſelves, or of both; a courſe which was never before permitted by the *Common Law* of the *Realme*, wherein no *Tryall* was allowed; but that only *per legale Iudicium parium*, as the *Great Charter* it ſelfe plainly doth acknowledge.

And this was now at the laſt deviſed, becauſe as the *Statutes* themſelves doe report, that ancient and ordinary proceeding at the *Common Law*, againſt theſe *Maintainers*, *Retayners*, *Ryoters*, and the reſt of that *rabble* was hindered by the greatneſſe of the *Offenders*, which were belike ſo *breſted*, *ſided*, and *backed* with a many *friends*, *tenants*, and *followers* in their owne Countries, that none *Indictment* or *tryall* could make the way to touch them: Which thing threatned the utter ſubverſion of the good *policie* of the *Realme*, if this ſoveraigne and higher hand had

had not been timely extended for help and remedie.

Howbeit by the expreſſe words of theſe new Lawes, theſe offences named in them, are in none other degree to be puniſhed in this *Court* now, than they were before upon conviction by judgement, and the tryall of twelve.

And therefore the change that is offered, reſteth cheifly in the circumſtances of place, Proceſſe, Iudges, and meane of tryall, the very ſubſtance it ſelfe (that is to ſay) the diſcretion of the fault it ſelfe, and the diſtribution of the paine due thereunto, remaining the very ſame that they were before; from the which appointed paines, if theſe Lords ſhall at any time think good to varie and depart, then it muſt be underſtood to be done by that former *authority* which they had, and have as the Councell of the King.

and

The double Authoritie of the *Star-Chamber.*

and not by vertue of these *Statutes*, which doe leave unto them no liberty at all in this behalfe, for wee may not so conjoyne, or rather confound these Authorities, as either of them shall be extinct, and drowned in the other, but wee must preserve them both separably, and distinct, not onely in understanding, but in the execution and practice also; even as when the *Iustices* that ride the Circuits, doe bring with them into the Countrie one *Commission* of *Oyer* and *Terminer*, and another of *Gaole Deliverie*, and a third of the *peace*, and doe sit upon the tryall of *Felonies*, they may lawfully extend their authoritie by the one, where the other will not reach, and serve the businesse; which thing, they could not do if by such a Conjunction the greater *Commission* should be said, to devoure and swallow the lesse.

him

A Confutation of ſome Objections againſt the Star-chamber.

AND this one hold is of ſufficient ſtrength to withſtand the Aſſaults of all thoſe objections which ſome are wont to make againſt certaine the proceedings in this Court.

For whereas they doe thinke that none other Complaints can be ſentenced here, but theſe onely, which are in theſe *Statutes*, or ſome other ſpecially appointed to be thus determined, they bee deceived, for that they doe not caſt their eyes upon that former power, which theſe Lords and others doe bring hither with them, as the *Councell* of the *Queen*, the which is not to be reſtrained to theſe ſo narrow bounds. And no leſſe doe ſome others erre in judgement, which doe maintaine, that without the preſence of ſome

two

two of theſe foure Lords mentioned in the laſt *Statute*, no Decree made in this Court is warranted by the *Law*, for they are convicted by the ſame former reaſon; conſidering that the *Councell* of the *Queene* (ſitting there in forme of a *Councell*) are not deprived of that ancient *authoritie*, by the abſence of any two or three of them.

More probably I confeſſe, doe thoſe men reaſon, who (preſſing this Court with the words of theſe *Statutes*, and with the generall uſage of all other Courts of *Iuſtice*) doe thinke that a *Bill*, or *Information* in writing is ſo neceſſary, for ſetting the *Complaint* on foot there, as that without it, the proceeding verbally, (or *Ore tenus* as wee call it) is not in any caſe to bee allowed.

It is true, that the hearing and determining cauſes upon Bills and

anſwers in *writing*, is generally a very ſure manner of proceeding, as well for the cutting off of all tergiverſation, and cavelling betweene the *parties*, as for the *warrant* and *defence* of the *Iudges* themſelves. But yet it ſeemeth to mee that in ſpeciall *Caſes* this Court both hath ſufficient authoritie, and may of good diſcretion take knowledge of the cauſe, and decree puniſhment for it, without any ſuch information of the *matter* ſet down in *writing*, for as all the *travell* and *labours* of whatſoever *Iudges* ought to bee directed to this only end, and marke, that (the *truth* of the *Controverſie* being found out) *Iuſtice* may bee delivered, and as in a *Criminall Complaint* (which is the proper ſubject of this Court) the *truth* can no way better appeare, than by *Confeſſion* of the *Offender* himſelfe. So if either the neceſſitie,

of the *Cauſe* doe require, that the guilty party be ſpeedily convented or charged, or if he be deprehended *flagranti crimine*, in committing the *fault*, or if the *offence* doe onely, or chiefly concerne her *Majeſtie*, or if the circumſtances thereof, be ſuch as may not ſeemely abide the blazing of a *Bill*, and then the *Offender* ſhall, upon *Examination*, freely, and without torture, confeſſe the *body* and *ſubſtance* of the *crime* that is verbally laid to his charge, ſurely neither he, nor any for him, can juſtly complaine of *Injuſtice*, in that he is *ſentenced* without *Bill*, and *answer* in *writing*: Wherefore when *Iuſtice* is once ſatisfied, I ſee none other uſe, but onely for a memoriall, in which behalfe the *proceeding* it ſelfe being entred in the Records of the Court, ſhall be an *act* of equall credit, with that, that begun by *Bill* in *writing*: and it

plaine

plaine, that *Bill* and *Anſwer* in *writing* be not of the ſubſtance, but only of the ſolemnitie, and ceremonie of *judiciall proceedings*, the which alſo may beſt be ſpared in *Criminall Cauſes*, in which otherwiſe the delivery of *Iuſtice* may ſometimes be hindred by over-much formality.

For which cauſe as I think, King *Edward* 1. in that place of *Britton*, which I have cited, ſticketh not to affirme, that it belongeth to his Kingly Office, to give due *Iudgement* whereſoere the very *truth* doth appeare, *ſans autre proces*, without any other *Formality*, *Ceremony*, *Solemnity*, or *Proces* at all. And therefore, if after a *Bill* exhibited here, and the matter of *Complaint* proved by *Examination* of the party, and by depoſition of *witneſſes*, it ſhould fortune, the *Bill*, or other parts of the *Pleading* to bee imbezelled or loſt; I would not doubt, but that this

Court (which muſt not alwayes be tyed to the ſtrict order of *Pleading*, that is neceſſary to be obſerved in ſome other Courts) might either cauſe a new *Bill* to be framed upon the *matter* already proved, and brought to light, or elſe command the *Queenes Atturney* to enforme it *Ore tenus* verbally, without offer of any *Bill* at all. According to which ſummary manner of *Iudgement*, the *Kings Councell*, who have the exerciſe of the ſame, his owne *Authority* have many times proceeded in this Court: Whereof the Bookes of Entries there, hath plentifull Teſtimonies; which I for avoiding the odious *rehearſall* of mens names, not yet forgotten, doe willingly forbeare to produce.

Thus have I made it appeare both what hath been the right uſage of this Court, by the originall *power* thereof, and what acceſſe of *Au-*

thoritie

thoritie it hath received by theſe new *Lawes* and *Statutes*; the which were, as you ſee, ordained to apply a moſt honourable, high, awfull, and ordinarie remedie for theſe enormities and exceſſes, which were at that time growne ſo exorbitant and high, that they might not ſufficiently be revenged by the inferiour *Iudges*, and uſuall ſtroake of the *Common Law*. In which caſe right neceſſary it was, that the *King* himſelfe, and ſuch as were neereſt in the ſtaire of *Authoritie* underneath him, ſhould ſhew themſelves; by the *Majeſtie* and awe of whoſe *Perſonall State* and *Preſence*, both theſe *Offenders* might bee abaſhed, and beaten down, and theſe *offences* might be made exemplary, and forewarning to other men.

MVSEVM
BRITANNICVM

The ſeverall Offences determinable by the Statutes.

AND now ſo much being ſaid touching theſe things, let us deſcend to the particular enumeration and handling of theſe *offences*, that are by the *Statute-Lawes* to be heard and determined before the Lords here. And for as much as theſe two *Statutes* doe affoord us eight at one, let them be ranged in the firſt place as they ſtand, *viz.*

Vnlawfull Maintenance.
Giving of Liveries, Signes, or Tokens.
Reteiners by writing, or otherwiſe.
Embraceries of the Kings ſubjects.
Vntrue demeanings of Sheriffes, in making Pannels, or other untrue Returnes.
Taking of Money by Iuries.
Great Riots, and unlawful Aſſemblies.

All

All which alſo, are bent (as I ſaid) either by fraud or force, to the hinderance of the execution of *Law*, and to the encreaſe (as one of theſe *Statutes* ſaith) of *Murthers*, *Robberies*, *Perjuries*, unſuretie of mens *lives*, and loſſe of their *goods* and *lands*. For the better manifeſtation of theſe matters, therefore I will lift them up by one and one in order as they lye; and will firſt ſhew the nature of each *fault*; then, the *evils* that doe enſue thereof: and laſtly, the *puniſhment* that by *Law* is layd upon it.

Maintenance.

Maintenance ſeemeth to be derived of the *Latine* words, *Manu tenere*; becauſe hee that maintaineth, taketh by the hand (as it were) and holdeth the *Cauſe* of another man as faſt, as if it were his owne

proper: and therefore *Maintenance* is a kind of *conſpiracie* made by two or more *perſons* againſt ſome *other*; becauſe the very *partie* to the *Cauſe*, and that others which ſtepperh into the furtherance of it, doe combine themſelves together, and doe make a *Complot* againſt the *adverſe partie* to the ſame. And this may be as well for matter hanging in *Suit*, or *Plea*, as for ſome other *Cauſe* not being brought in *Plea*, or *Action*, howbeit, *Maintenance* is commonly underſtood of *Cauſes* in *Suit*: as when one that hath none *intereſt* to a matter in queſtion, will either give *money* to *Councell*, or will take ſome *intereſt* of purpoſe, to make the *Cauſe* ſeeme to be his owne, or will ſhew himſelfe (and give his *ſpeech* or *countenance*) for the *one ſide*, at the time that the matter ſhall be *heard*, or *tryed*; or will *terrifie* or *diſcountenance* the *contrarie ſide*; or generally, will doe any thing

for

for the *one partie*, to the hinderance of the free courſe of *Iuſtice* againſt the *other*.

Of this *Maintenance*, there is one ſort that beareth a ſpeciall name, and is called *Champartie*; becauſe the partie to a *Suit* giveth to ſome other man (for *maintenance* ſake) *Campi partem*, that is, ſome *part* of the thing in demand, or otherwiſe, ſome *profit* going out of the ſame. And *Champartors* (ſaith the *Statute* 3. *Ed.* 1.) be they that *move Pleas* and *Suits*, or cauſe them to be *moved* by their owne (or other mens procurement) and *ſue* them at their owne proper *Coſts*, to have part of the *land* in variance, or part of the *gaines* that may come by the *Suit*. *champartie.*

The *perſons* that fall into the *fault* of *Maintenance*, or *Champartie*, be eyther *publike* (as *Officers*) or elſe *private* men: And the *evils* that doe enſue thereof, be great in them both; but

but ſo much the greater in *publik* perſons, as they have (which *privat* men doe want) the helpe of their *Offices*, and aide of their *Authoritie* to worke their harmes withall. For if it be permitted, that every one (and eſpecially ſuch as have the higher *Places*) may ſtep into the *Quarrell* of another, and *maintain* it as his owne, both by his *Purſe* and other *Power*; then ſhall the *Cauſe* of the poore and honeſt be o verthrowne, and trampled under foot, and then ſhall the *wicked* be imboldened to offer *injurie*; and the way to *redreſſe*, ſhall be ſhut up and faſt barred. The *Lawes* of the *Realme* have therefore (according to the diverſitie of the *offence* herein) ordained ſundry and diverſe *puniſhments*: And firſt, for *Maintenance*, thus:

None of the Kings Counce lors, **ſervants of his** Houſehold Officers

Officers of his Courts, or great men of the Realme, shall take upon them to maintaine any Quarrels or Parts in the Countrey, to the disturbance of the Common Law: Upon paine, that every Officers Bodies, Goods, & Lands shall be at the Kings pleasure, 1.Ed.3. cap.14. 4.Ed.3. cap.11. 20.Ed.3.cap.4. & 1.R.2.cap.4.

No man shall by any meanes buy or sell, or take, promise, or covenant to have any pretended Right or Title to any Lands, Tenements, or Hereditaments, unlesse he that so selleth, promiseth or covenanteth, or his Ancestors, or they by whom hee claymeth, have beene in possession thereof, or of the Reversion or remainder thereof, or have taken the Rents or profits thereof by the space of one whole yeare next before such sale, covenant, or promise: upon paine,

paine, that such seller or promiser shall lose the whole value of the thing bought, or promised; and that such buyer or taker of promise (knowing hereof) shall likewise lose the whole value thereof.

No man shall by any sinister labour or meanes maintaine any matter or cause, to the disturbance or hinderance of Iustice; upon paine to lose 10. li. for every offence, 32. H. 8. cap. 9.

No Sheriffe or Steward of any Court shall suffer any Barettor, or maintainer of Quarrels, in their Countrie Courts, or other Courts; upon paine, that the King shall grievously punish both the Sheriffe and him that so doth, 3. E. 1. cap. 32.

No person (after forcible entrie by him made into any Lands, or after the holding the same with force)

force) shal make any feoffement or discontinuance thereof (for maintenance sake) to any Lord, or other person, to defraud the Possessor of his Recoverie: And if it may be proved, thē that feoffement or discontinuance shalbe void, 8 H.6.c.9.

No person shal so maintaine any Riot, Rout, or unlawfull Assembly, that the same thereby may be found by the Iurie (charged to inquire thereof) upon the paine of imprisonment, and to forfeit 20.li. 19.H.7. cap.13.

Touching Champartie, it is ordained, that such as take Pleas to Champartie by any craft or means, shall (if they be any of the Kings Councellors, Household servants, Iustices of his Courts, or ministers there) have 3. yeres imprisonment, and make fine at the K. pleasure, 21.E.1. & if they be other persons than such, thē they shal forfeit so much

at first to be shielded from it: Besides this, there was wont to be another kind of league and aliance, not of Master and Servant, but of equalls amongst themselves, whereof no lesse harme ensued than of the former: For the vulgar and base people, espying that the *Church-men* were rich and strong by their immunities, the *Nobility*, *Gentrie*, and best *Yeomandrie* of the Countrie were fast linked in bands together, and that in Cities and Corporate Townes also, there was an usuall combining of many into one body: So as all other sorts of men (besides themselves) were strongly united, and they onely loose, and left to themselves: They also fell therefore to shoaling and banding into *Companies*, and (each man at their owne charge) suited themselves in like *Coats*, *Hoods*, *Hats*, *Laces*, and other common *markes*, whereby

they

they might be knowne each to o-ther of them.

Now, albeit theſe *Conventions* may (at the firſt ſhew) deceive ma-ny, with a *Vizard* of *Amitie*, *Love*, and *Brotherhood*; yet the *wiſdome* of the *Law* (that is able to unmaske ſuch *fraud*) hath diſcovered many dangerous *evils*, that lye and lurke underneath them.

For, beſides that the common courſe of *Iuſtice* betweene man and man, was greatly interrupted by theſe *Confederacies*; ſo as hardly any man that was not partie to ſuch a *Conjuration*, could either aske his *Right* againſt any of them, or repell the *injurie* that they ſhould offer unto him; the *Cauſe* of every one of them, being uſed as the *common Cauſe* and *Quarrell* of them all: It was found *perillous* (by many *proofes*) even to the *Eſtate* and *Kingdome* it ſelfe, that either *Noblemen* or *Gentle-*

much of their owne Lands and Goods, as the thing (that they have so bought) shall be worth; 28. Ed. 1.

Giving of Liveries.

GIving of *Liveries*, *Badges*, or other *signes* or *tokens*, is the next *fault* in order to *Maintenance*, and partaketh of the same nature, being also a sort of *Conspiracie* to *maintaine* some partie, and make it great withall; for on the one side, when *Noble* (or mighty men) and *Gentlemen* doe perceive that the tryall of *Causes* in the Countrie proceedeth ordinarily by the mouths of *Franklins* and *Yeomen* (*Free-holders*) and doe find themselves unable (without such) to cover their *wrongs* and *oppressions* with the Cloake of *Law*: Then doe they many times reteine such men into their *avowment*, *ser-*

vice,

vice, and *protection*; offering unto them the countenance of their own *Nobility*, *Authoritie*, *Wealth*, and *Friends*, that they alſo may receive reciproque favour and good helpe by their ſollicitation and meanes amongſt the *Free-holders* of the Country that be their *Neighbours*, *Friends*, and *Kinsfolke*.

And on the other ſide theſe *Good fellowes*, ſeeing that the *Cloake* and *Cloth* of a *Noble man*, or other great *perſonage*, is a good defenſative againſt ſuch ſtormes of *Law* (or other buſineſſes) as doe ariſe in the Country, and that *Might* doth many times (as the Proverbe is) overcome *Right*. They alſo willingly and by great Suit emband themſelves amongſt their other ſervants; and many of them when they finde themſelves ſo inveſted, wax afterwards as bold to offer wrong to their *Neighbours*, as they were glad

at

men ſhould draw ſo long *Tailes* after them, or that the meaner ſort of the people ſhould be ſuffered to make ſo ſtrong *Bodies* and *Bands* within themſelves; both which, are the *Seed* and *Weed* of *Mutinie*, *Tumult*, and *Rebellion*. And therefore, the *Lawes* have armed their *power* againſt them; providing at the firſt, That no Yeoman, or other perſon, (under the degree of an Eſquire) ſhall take any Liverie of any Lord, except he be his Houſehold ſervant, or continual Officer; upon paine of Fine and Impriſonment, 16. R. 2. cap. 4. & 20. R. 2. cap. 2. Then afterwards it was ordained, upon the like paine, That no Lord, Spiritual or Temporall, ſhould give Liverie to any Knight, or Eſquire, other than to his Houſehold ſervants, Officers, or Councell learned in the Law, 1. H. 4. cap. 7. Which *Law* ſtepped ſo far into this matter, that

that it forbad *Knights* and *Eſquires* to weare the *Kings* owne *Liverie*, during the time that they had their aboade in their Countries. And King *Henry* the fourth ſeeing this *evill* to encreaſe, did alſo encreaſe the *paine*, and layd 5. *li.* upon the *giver* of every *Liverie*, (if he were a *Knight*, or under that eſtate) and 40. ſhillings upon the *taker*, 7. *Hen.* 4. *cap.* 14. At the length, the *penaltie* of 5. *li.* for every moneth, was inflicted upon the *giver*, and the like upon the *taker* of any *Liverie*, except he were his *Houſehold-man*, *Officer*, or *Councellor* at the *Law*, 8. *Ed.* 4. *cap.* 2. And becauſe it was at the length perceived, that the *Officers* of the *Kings* owne *Caſtles*, *Mannors*, *Lands*, *Forreſts*, *Chaſes*, and *Parkes*, were *retained* unlawfully by other men, and did alſo *retaine* into their owne *ſervices* unlawfully the *Kings Fermers* and *Tenants*; thoſe *offences*

were alſo drawne into *Iudgement*, and *puniſhed*, by the *loſſe* of thoſe their *Offices* and *Leaſes*, 3.*H*.7.*cap*.12.

Thus farre of *Liveries*, *Signes*, or *Badges*, given by the *Superiour* to his *inferiour*.

As touching that other *confederacie* by the *common people*, the ſame was alſo *prohibited*, under the *paine* of 40.s. laid upon every one that ſhould *congregate* themſelves by the uſe of any *common Liverie*; thoſe *Fraternities* and *Myſteries* of *Cities* and *Boroughes* (that were ordained to a *good intent*) onely excepted, 7.*H*.4.*cap*.14.

And now it might ſeeme, that ſufficient *Law* had bin provided againſt all kind of *Retainments*: but yet that was found true, which one ſaid; *He that will deviſe* Law *againſt offences, hath the head of* Hydra *to fight withall*; ſeeing that one *evill* is no ſooner cut off, but another ſtarteth up, and taketh the place. And even ſo fell it

out

out in this matter of *Retainments*: For when the *Law* had laid ſharpe *correction* upon the giving of *Liveries*, *Signes*, *Badges*, or other notorious *tokens* of *unlawfull complots*; then was it deviſed, that *men* ſhould ſecretly *bind* themſelves together (for *maintenance* of *Quarrels*) by *Oathes*, *Promiſes*, or *Writings*; whereof there grew a great deale more hurt, than of all the other *Retainers* beſides: for that, in thoſe other *Retainments*, men ſerved at *libertie*, and might change when they would; but by this meanes they were ſo faſt tyed, that without breach of *Oath*, or *Promiſe*, (things whereof all men uſe to make ſome *conſcience*) they could not be ſet *free*, and *delivered*: And therefore, both ſuch *Retainers*, and he that is *retained*, are to loſe 100.s. for every *moneth* that ſuch their *retainment* ſhall continue, 8. *Edw.* 4. *cap.* 2.

Theſe be the *paines* that *Law* hath provided, and thoſe be the *evils* that former times have eſpyed, concerning this matter of *Retainment*.

But yet there is, in time, a further *Miſchiefe* begotten; the which if thoſe *Lawes* had fore-ſeene, they would have *whetted* a ſharper *edge* againſt it: For ſeeing that in former *Ages*, the *payment* of *Subſidies*, the *ſervice* at *Muſters*, and ſome other common *charges* of this our *time*, were not uſuall; the *harme* of *Retainments* was not then ſo throughly ſeene and diſcovered, as now it is.

There is nothing more uſuall at this day, than to *retaine* the wealthieſt *Yeomanrie*; and either by forbearing them *wholly*, or charging them *lightly*, to make recompence of their *ſervice*, by robbing the *Queenes Coffers*, or by defrauding *Her* and the *Realm* of that *help* which they might bring, if they were equally *burdened*

as

as their neighbours be, and not favoured by men that manage thoſe *ſervices*, in reſpect that they belong unto them. Which thing conſidered, it is to be wiſhed, that eyther ſharper *Law* were provided, or (at the leaſt) the former *Law* more ſeverely executed, againſt unlawfull *Retainments*. But now to the reſt.

Embracerie.

THat *Embracerie* of the Kings *ſubjects*, which is mentioned in thoſe *Statutes*, may be of two ſorts: For either it may be taken for the drawing of *men* into *Bands* and *Companies*, for *maintenance* ſake; and then it is but a *member* of the former *maintenance*: or elſe it may ſignifie, the *ſeducing* of *Iurors* to pervert *Iuſtice*; the which is more properly called, and moſt commonly known, by the name of *Embracerie*, and yet

is a ſort of *Maintenance*, and *Conſpiracie* alſo: For in this reſpect, the *Statute* (28. *Ed.* 1.) called this ſort of men, *falſe Informers*, and *Embraceours* of *Aſſiſes*, and *Iuries*: And the *Statute* (38. *Ed.* 3. *cap.* 13.) defineth them to be *Embraceours*, which doe ſollicite and procure *Enqueſts* in the *Countrie*, to make *gaine* and *profit* thereby.

It tooke the name, and may well be derived, either of the *French* word *Embracer*, which is to *kindle* or ſet on *fire*; or elſe of the word *Embraſher*, of the ſame *Language*, which our *Tongue* hath *adopted*, and uſeth in the ſame *ſence*; that is, where one man taketh another in his *armes*, and (as we uſually ſpeake) *embraceth* him: For by a *Metaphor*, of the firſt *meaning*, he that *laboureth* a *Iurie* for the *one ſide*, (or *partie*) may well be tearmed an *Embracer*, becauſe he cannot doe it without *kindling* (or *incenſing*) their

mindes

windes againſt the other *partie:* And by a *Metaphor*, of the ſecond *meaning*, he may be ſaid to be an *Embraceour* of a *Iurie*, that maketh *much* of them, and *embraceth* them in the *armes* of *faire ſpeech*, *gifts*, or *promiſes*; to the end, to *allure* and *winne* them to the *one ſide*, againſt the *other*. So that, if a man will take upon him to *labour* and *plie* a *Iurie* for the *one ſide*, before they come to the *Barre*; or for to *affray* them, when they be at the *Barre*; or by any meanes *endeavour* to *corrupt* them, for the *helpe* of the *one partie* againſt the *other*; hee is a ſpeciall *Maintainer*, under the name of *Embracerie*.

What *Evils* doe follow of this *fault*, may be ſeene by this, That it is a ſort of *Maintenance*; and therefore ſendeth abroad the like *effects*, in generalitie, that our *Maintenance* have: But eſpecially, it is *occupied* in cor-

corrupting of *Iurors*, which are (
effect) the very *Iudges* of our La
ſeeing that the *Iudges* can giue no o
ther *ſentence*, than according to th
Verdict which the *Iurie* preſente
unto them.

Now what harmes may enſue b
poiſoning the *opinion* of *Iurers* in thi
Realme (wherein the chiefe proce
ding in *Law* is by the meanes o
them) every man may ſee, and (t
ſay the truth) no leſſe *miſchiefe* do
accompanie it, than the ſecret u
dermining, ruine, and overthrow o
all *Law*, *Right*, and *Iuſtice*.

Worthily therefore hath the *La*
(28. *Edw.* 3. *cap.* 12.) ordained
That if any perſon ſhall (for hi
owne gaine) embrace any Iur
or Inqueſt, he ſhall loſe ten time
ſo much as he receiued; and i
he haue not whereof to anſwe
ſo much, then he ſhall endure
whole yeeres impriſonment.

Bu

But if hee ſhall embrace a Iurie, without taking any thing for his labour, yet by the Statute (32. H.8.cap.9.) he ſhall pay ten pounds for every ſuch his offence.

Offences in the making of Pannels.

AND now, even as thoſe that ſtrive to doe wrong, can little prevaile by running the courſe of *Law*, though they be mightie to *maintaine*, though they be never ſo furniſhed with *Reteyners* and *Followers*, and though they can perſwaſively deale with *Iurers*, and *Inqueſts* alſo, unleſſe withall, by the helpe of the *Sheriffe* (or his *Clarke*) ſuch men be *returned*, and put into the *Pannell* for them, as they themſelves ſhould nominate, or like: Even ſo, thoſe *Statutes*, ſeeing that *Cauſes* in *Law* depend no leſſe upon the ſound

and

and upright *ſervice* of the *Sheriffe* than doth the *doore* upon the *hooke* (by the meane of which it openeth and cloſeth at pleaſure) they have in the firſt place noted two ſeverall *miſdemeanours* of that *Officer*, and have referred the *correction* of the ſame to this *Honourable Aſſembly* in the *Star-Chamber*; The one, is the untrue demeaning of the *Sheriffe*, in making *Pannels*; the other, is his *falſhood* in other *returnes*.

By the *Pannell* is meant that *Catalogue* (or *Roll*) wherein the names of 24. good and lawfull men ought to be *returned* by the *Sheriffe*, out of which the number of *twelve* are to bee *tryed* and *ſworne*, and to yeeld their *Verdict* upon each *matter* in *iſſue*, that is triable (by *Iurie*) between man and man; and the ſame or a greater number of them, to be charged for *enquirie* on the behalfe of the *Queene*. In which part, in the

the *Sheriffe* ſhall apply himſelfe to *ſerve*, not the *Court*, and *Iuſtice*, (whoſe *miniſter* hee is) but the one or the other *partie* (that ſhall *corruptly* winne him) then ſhall not the better *Cauſe*, but the fuller *Purſe* prevaile; and it ſhall be all one, whether the *partie* be *Iudge* of his owne *matter*, or *procure* ſuch as himſelfe ſhall *denominate*, to paſſe upon the *Tryall* for him.

And as in this part of his *Office*, the good *demeanour* of the *Sheriffe* maketh much to the furtherance of *Right*; and his *corrupt* dealing may highly advance *Injurie*, and *Wrong*: So alſo, by all other the *Returnes* and *Anſweres* of his *ſeruice* to her *Majeſties* Courts, hee may greatly *helpe* or *hurt* the *matter* in queſtion; eyther winning time againſt the *Plaintiffe*, by dilatorie *Returnes* of his *writs*, and *Proces*; or wringing the *Defendant*,

by

by untrue *answer* made of that which he hath in charge, or abusing both them and the *Court*, by sending in no *returne* at all.

In all or the most of which *Cases*, although the partie (defrauded by him) may sometimes helpe himselfe by *averrement* against his *returne*; sometimes, by *complaint* to the *Court* where the *suit* dependeth: and other times may find *amends*, by an *action* upon the *Case* for his abuse; yet the *Law* seeing that *Iustice* is many times both *delayed* & *deluded* by such unfaithfull *services*, hath first (touching *Pannels* generally) provided by the *Statutes* (42. *Ed.* 3. *cap.* 11. 34. *Edward.* 3. *cap.* 4.) for the better direction of the *Shriffe* in that behalfe, that (upon paine to be *fined* after the quantitie of the *damage* sustained by the partie) in all manner of *Pannells*, those persons should be put that be most

substan-

ſubſtantiall, worthy of *faith*, and not *ſuſpected*, nor *procured*, but having beſt knowledge of the *truth*, and being moſt nigh to the *place*, where the *queſtion* in *Law* doth ariſe. And (18. *H.* 6. *cap.* 14.) it was ordained to continue for a time, **That if the** Sheriffe, **or** Bailiffe, **ſhould take any thing for arraying of** Pannels, **the Partie grieved ſhould have his** Action, **and recover ten times ſo much againſt him.** And that this abuſe may bee the more ſurely repreſſed (eſpecially in caſe where the *ſervice* concerned the *Prince* himſelfe) order was taken by the *Statute* (3. *H.* 8. *cap.* 12.) **That the** Iuſtices **of** Goale-deliverie, **and of the** Peace, **might reforme all** Pannels **returned before them, to ſerve the** King; **and that the** Sheriffe **and his** Miniſters **ſhould (under the pain of twenty pound) eftſoones returne**

turne the ſame ſo reformed by them.

Many other *Rules* there are, particulary ſet downe by ſundrie *Statutes*, concerning the value in lands or goods, of the *Iurors returned*, in ſundrie ſorts of *Actions*; concerning *Hundredors*, to be inſerted in the *Pannell* amongſt them; touching the quantitie of the *Iſſues* that the *Sheriffe* ought to *returne* upon every of their heads, and ſuch other matters, whereof many doe carrie their ſpeciall *paines* within them: all which are over-long to be recited here, and be ſufficient of themſelves to make the *Body* of a large *Diſcourſe*.

Vntrue Returnes by Sheriffes.

TO come to the other part thereof, where either the *Sheriffe* will not receive the *Writ* at all, or (recei-

(receiving it) will either make no *returne*, or a *ſubtill* or *falſe returne* of the ſame; there is a large *Statute* made, (13. *Ed.* 1. 39.) by which it is enacted, **That the** partie **may deliver his** Writ **openly to the** Sheriffe, **to be** ſerved, **taking a** Bill **thereof from the** Sheriffe **himſelfe, or other** witneſſes: **And if hee doe not then** returne **the ſame, the** partie **ſhall have** Damages **againſt him, according to the** perill **that might come unto him by that delay.** The like *Remedie* is there given, if the *Sheriffe* will untruly *returne*, That the *Writ* came ſo late to his hands, that he could not, for want of time, make *execution* of it. There is *helpe* alſo for the untrue *returnes* of *ſmall Iſſues*, upon a man whoſe Land is able to anſwere *great*: And for the unjuſt charging of *Bayliffes* of *Liberties*, to have made him none *anſwere* of

the *Writs* that he ſent unto them: In all which *Caſes* of *falſe returne*, *power* is given to the ordinarie *Iuſtices*, to *puniſh* a *Sheriffe* once or twice for his *offences*: But if he *offend* the third time, that then no man ſhall have to doe therewith, but the *King*: Even as (by the ſame *Statute*) no Iudge or Officer may take upon him to puniſh a great man (that ſhall reſiſt the Sheriffe in the execution of the K. Writs) but the King himſelfe, to whom that power is reſerved: Becauſe (as the *Statute* ſpeaketh) ſuch perſons be diſturbers of the Kings Peace, and of his Realme.

But, for as much as the *Vnder-Sheriffes* (or *Clarkes* of the *Vnder-Sheriffes*) waxed bold to commit the ſame *offences*, for which their *Maſters* were to be *puniſhed*, and for which, as yet, there was not any *Sword* of *Law* drawne againſt themſelves;

ſelves; there was (in the time of the ſame King) an *Ordinance* made, (and called, *Tractatus contra Vicecomites, & Clericos*) By which it is to be provided, **That if the** Offence **of a** falſe returne **be found in the** perſon **of ſuch a** Clarke **to the** Sheriffe; **then ſhall that** Clarke **both make** Fine **to the** King, **and** ſatisfie **the** partie **hurt, (if he be able) and the** Sheriffe **to goe quit: But if the** Clarke **be inſufficient, then is the** Sheriffe **himſelfe to anſwer for him.**

Howbeit, this laſt *Age* hath proceeded further, and hath given order, (27. *Eliz. cap.* 12.) **That as well the** Vnder-Sheriffe, **and his** Clarke (or Deputie) **as each** Bayliffe **of** Franchiſe, **ſhall take an** Oath, **for the avoiding of this and other corruptions.**

It would prove tedious, to proſecute the varietie of all thoſe *paines*

and *forfeitures*, that *Law* (in *force*) hath deviſed againſt the untrue *Returnes* of the *Sheriffes*; neither is it ſo fit for the purpoſe, that I have now in hand; ſeeing, that in the moſt of them, the ordinarie *remedie* (given by thoſe *Statutes*) is ſufficient for *revenge*: And therefore, having already opened that *part* which beſt ſerveth for giving *Iuriſdiction* to this *Court*, I will goe forward to the handling of the reſt.

Taking of Money by Iurors.

IT is juſtly to be ſuſpected, that if the *Iurie* take *Money*, to give their *Verdict*; they, with *Iudas*, betray the *truth*: And if it be moſt true, that *Gifts* and *Bribes* will pervert the *Iudgement*, even of the wiſeſt; then how can it be otherwiſe, but that the common *man* ſhall be drawne aſide, and corrupted thereby: The which

which *fault* is ſo much the greater, than either is *Conſpiracie* or *Maintenance* in the *parties*, (that be but private men) or falſe and undue dealings in the *Sheriffe*, and his *Clarke*, (being publike *Officers*) as howſoever they ſhould *conclude* amongſt themſelves, and *cloſe* together: Yet an upright and faithfull *Iurie*, that (without reſpect of *reward*) would attend the *truth* of their *Evidence*, might overthrow the *frame* of whatſoever *miſchiefe* they ſhould imagine, or intend betweene them: And therefore, when the *Iurours* alſo, that be (as I ſaid) more than halfe *Iudges* of the *Controverſie*; ſhall *pledge* the one of the parties in that *Cup* of *Poyſon*, which hee hath *brewed*, to deſtroy the *life* of his adverſaries *right*; what can be looked for, but that the better *side* ſhall have the worſe, and take the *fall*?

And this being ſeene to the *Law*, it was ordained, 34. *Ed.* 3. *c.* 8. That if a Iuror (in any Enqueſt to be taken for the King, or betweene parties) doe take any thing, by himſelfe, or by any other of the parties, Plaintiffe or Defendant, to ſay the Verdict; then ſhal he pay Decies tantum, ten times ſo much as he hath taken; whereof the one halfe be to the King, (whoſe Iuſtice and Iudgement hee hath perverted) and the other halfe to the partie (or any other) that wil ſue for the ſame: And if he have not to ſatiſfie the Law, then to have the impriſonment of a whole yeare.

In which *Statute*, one thing is ſpecially to be obſerved; That, to *take* any thing whatſoever (for *ſaving* of the *Verdict*) is an *offence* againſt it: although the *Statute*, (3. *H.* 7.) that ſubmitteth this *fault* to the *puniſh-*

ment

ment of the *Star-chamber*, hath no mention, but of the *taking* of *Money* onely: Which words, if they be not *conſtrued* by an *equitie*, the whole *Law* may (for this *point*) be deluded by it.

Riots, Routs, and Rebellious Aſſemblies.

AFter this, and the reſt of the *offences*, that are carried in the *Lap* of *Fraud*, *Covin*, and *Deceit*; great *Riots*, and *unlawfull Aſſemblies*, that will make their *way* by *fine force*, came next to my hand: The which two, though they be diſtinct *faults*, both in the *propertie* of their owne *nature*, and in the *order* of theſe *Statutes*; yet, becauſe (for the moſt part) the one is but the *effect*, and *ſequele* of the other, I will *wynde* them up both in one *Bottome* together.

Not with cauſe, but for diſtinction ſake, doth this *Statute* (3. *Henr.* 7.) call ſome *Riots*, great: For ſundrie former *Lawes* doe note two manner of *Riots*; the one *leſſe*, aſwell in reſpect of the ſmall number of the *perſons* that commit it, as in regard of the ſmall *terrour*, *diſturbance* or *hurt* that enſueth of it; the other *great*, or *hainous*, becauſe it ſavoureth of a more general *diſobedience*, even to the ſhaking of the *Eſtate*; and is, or may be (in regard of the number or quarrell) a very *Seed* of *Mutinie*, and *Rebellion*.

And therefore the *Statutes* (5. *Richard* 2. *cap.* 6. & 7. *Richard* 2. *cap.* 2. & 6.) doe terme the *Riots* of this latter ſort by the names of *Rumours*, great *Ridings*, *Routs*, and *Riots*, againſt the *Peace*. The *Statute* (2. *Henr.* 5. *cap.* 9.) calleth them *Aſſemblies* of *people* in great

num-

umber, in manner of *inſurrection*; and the *Lawes* (5. *Rich.* 2. *cap.* 6. & 1. *Mar. Parl.* 1. *cap.* 12.) doe name them *Rebellious Inſurrections*, and *Rebellious Aſſemblies*.

But the *offences* of all theſe ſorts, are now at this day diſtinguiſhed by three received names; that is, *unlawfull Aſſemblie*, *Rout*, and *Riot*.

An *unlawfull Aſſemblie*, is commonly taken to be, where a *companie* of three *perſons* (or moe) bee gathered together; to the end, to commit (forcible) an *unlawfull Act*.

A *Rout*, is likewiſe conſtrued to be, where ſuch a *Companie* of three (or more) being gathered to ſuch an *end*, doe move *forward* (by *going* or *riding*) for the putting of their *intention* in practice; and yet doe not come to the very *actuall* handling and execution of their *purpoſe*.

A

A *Riot* is the very *effect*, and *finall act* of ſuch a *Company* of three (or moe) *aſſembling*, *proceeding*, and *putting in execution* (forcibly) that *unlawfull worke* which they intended.

As for example, If three *perſons* (or moe) under the number of *twelve*, doe *aſſemble* themſelves *unlawfully*, to beat any *perſon*; or to enter forcibly into the *houſe* or *land* of any other, or to pull downe the *incloſures*, or any *Parke*, *Warren*, or *ground incloſed*; or to deſtroy any *Fiſh-pond*, *Poole*, or *Dove-houſe*, or to doe ſuch other *act*, and (being ſo *aſſembled*) doe goe forward about the ſame, and doe effect their deſire; then is this an *unlawfull Aſſembly*, for their firſt *meeting*; a *Rout*, for their *moving forward*; and a *Riot*, in the *end*, by their *execution*.

The word *Rout*, came from the *Saxons* (our *elders*) who to this day call

call *Rot*, a *band* (or *companie* of *men*) riding together.

Riot, we borrowed of the *French*, *Rioter*, which is, to braule, or ſcold, becauſe moſt commonly *outragious deeds* doe follow *contentious* and *ſcolding words*.

The *evils* that will enſue, if fellow ſubjects may be ſuffered to run (when they liſt) on heapes, and to put and puſh each at other (as the wild and ſavage Beaſts of the *field* and *Forreſt* are wont to doe) be ſo great and apparant, that they bewray themſelves, and need no words to *blaze* them: The *paines* thereof that *Law* hath inflicted upon ſuch *Aſſemblies*, *Routs*, and *Riots*, bee theſe: They ſhall be taken by the *Iuſtices* of the *Peace*, and *Sheriffe*, and bee throwne into the next *Goale*, till they have made *Fine*, and *Ranſome* to the King, 15. *Rich.* 2. *cap.* 2.

Rioters

Rioters, attainted of great and hainous *Riots*, ſhall be *impriſoned* one whole yeare (at the leaſt) without *Baile*, or *Mainpriſe*, and then make grievous *Fines*: And ſuch as ſhall bee attainted of *Petite Riots*, ſhall have *impriſonment*, and make *Fine*, as ſhall ſeeme good to the Kings *Iuſtices*, 2. *Henr.* 5. *cap.* 8.

But if the *number* of ſuch an *Aſſemblie* be *twelve*, or above, that ſhall attempt any of the things prohibited by the *Statute*, (made againſt *unlawfull* and *rebellious Aſſemblies*, in the firſt yeere of Queene *Maries* Reigne) and doe continue together by the ſpace of one *houre*, after *proclamation* orderly made for them to depart; then is their *offence Felonie*, and may receive *puniſhment* in another *degree*, and in another *Court*, by the ordinarie courſe of lawfull *tryall*.

Thus

Thus have I detected theſe ſeverall *Offences*, that are ſpecially ſignified by theſe two *Statutes*: Wherein I have not ſo largely extended my *Diſcourſe*, as the *Argument* it ſelfe will beare; (eſpecially for that part which deſcribeth the *Paines*) partly, becauſe I undertooke to make onely a *Summarie* ſhew of the whole *Matter*; and partly, for that thoſe Honourable *Iudges* are not tyed (as I ſaid) to the preſcript *Paines* of thoſe *Statutes*: but may (as the *Caſe* ſhall offer to their grave Conſiderations) eyther *alter*, *encreaſe*, or otherwiſe *qualifie* any of the ſame.

Coun-

Counterfeits of Privie Tokens.

TO theſe (for an end) I muſt adjoyne ſuch other *Statutes* alſo (now in force) as have been enacted ſince that time; and in which, there is ſpeciall *direction* of *power* given to the *Lords* and other of her Majeſties *Councell* in the *Star-chamber*, as namely firſt that *Act* (made 33. *Henr.* 8. *cap.* 1.) againſt the *Counterfeitors* of *Privie Tokens*, and *Letters*, in the names of other *perſons*, for the obteyning of *money*, or other *goods*. Then that other *Act* (which paſſed 4. & 5. *Phil.* & *Mar. cap.* 8.) againſt the conveighing away of *Maidens* under the age of ſixteene yeeres, from the poſſeſſion of their *Parents*, or *Governours*; and againſt the *contracting* of *Matrimonie* with any ſuch *Maidens*, their *Parents* not knowing thereof, or not

not *conſenting* thereunto. And laſtly, that *Act* (ordained in the 5. yere of our Soveraigne *Lady* that now is, *cap.* 14.) againſt the *forging* of *deeds*, *Inſtruments*, and *Writings*, in their ſundry *Natures* and *Degrees*. Of which *Lawes*, I ſhall not need to ſpend any further *ſpeech*, but onely thus to point them out; conſidering that they doe moſt amplie and plainely comprehend within themſelves, aſwell the ſeverall *natures* of the *faults*, and the *evils* that enſue thereof, as alſo the *puniſhments* that are to be inflicted for everie of the ſame. 5. Eliz. c. 14.

And therefore, this is all that (for this *time* and *ſervice*) I purpoſed to ſay of this moſt noble and praiſe-worthy *Court*; the beames of whoſe bright *Iuſtice*, (equall in beautie with *Heſperus* and *Lucifer*, as *Ariſtotle* ſaid in a like caſe) doe *blaze* and *ſpread* themſelves as *farre*

as

as this *Realme* is *long*, or *wide*: and by the *influence* of whose *ſuper-eminent Authoritie*, all other *Courts* of *Law*, and *Iuſtice*, that wee have, are both the more ſurely *ſupported*, and the more evenly *kept*, and *managed*.

The Court of Requeſts.

IN that the Court of *Requeſts* handleth *Cauſes*, that deſireth *Moderation* of the *rigour* which the *Common Law* denounceth, it doth plainely participate with the nature of the *Chancerie*; but in that the *Bills* here be exhibited to the *Majeſtie* of the *King* onely, and to none other; and in that the *Maſters* of *Requeſts* were ſworne of the *Kings Councell*, and the *Place* hath continually been ſerved with a *Clarke*, that was ever therewithall one of the *Clarks* of the *Kings Privie Seale*;

geale, which is yet ſtill the originall *Writ* of this *Court*: It ſeemeth to communicate with the *Star-chamber* it ſelfe, and to derive her *Authoritie* immediately from the *Royall Perſon*, and his *Councell*, as that doth.

For the very ſame *Authorities*, and *Reaſons*, by the which wee have alreadie proved before, that the *King* may be appealed unto, for matter of *Crime*, where juſt cauſe doth enforce it; doe no leſſe forcibly convince, that he is alſo to be fled unto for *Equitie*, in rare caſes in civill *ſuit*, where the ordinarie rule of his *Law* is too hard and heavie for his ſubjects.

And no leſſe incident is it to the Kingly *Office*, to relieve the *Suitors* oppreſſed under the burthen of grievous *Law*, than to deviſe *correction* for the inſolent *Malefactors*, againſt whom no for-

mer *Law* or *Statute* hath beene provided.

It is out of all doubt therefore, that as our *Kings* have vſed perſonally to receive *complaints* of *Criminall* condition, and have *adjudged* thereof, by themſelves, or by their *Councel* of *Eſtate*; ſo haue they alſo, from time to time, takē knowledge of *Civil ſuites* (eſpecially offered by the poorer ſort of *Subjects*, or by their own *houſhold men*;) & have for the moſt part recōmended the ſame to the care of ſome of their ſaid *Councell*, aſſiſted with the advice of men learned both in the *Civil* and *Common Lawes*: ſo as ſome one temporall *Lord*, or *Biſhop*, two Doctors, and two *Common Lawyers* have beene many times knowne to have ſitten here for the *Requeſts* together.

And hereof it was (as I ſuppoſe) that the *Cauſe* of the two

Siſters

Siſters, (whereof I have told you in the *Star-chamber* before) was ſaid to have beene heard before the *Preſident* of the *Requeſts*, that is, before the *Lord*, or *Biſhop*, which was the principall perſon of this *Commiſſion* or *Company*.

Now, albeit there can no other beginning hereof bee conceived, then together with the very *regality*, and *kingdome* it ſelfe; yet foraſmuch as they of this *Court* have not alwayes had their ſtanding *place* of *reſort*, but have untill the *age* next before this, *remained*, and *removved* with the *King* wherſoever he went, travailing betweene the *Prince*, and *petitioners*, by direction from the mouth of the King: I have in this, as in the *Star-chamber* alſo, taken the firſt apparent ſetling and manifeſt *continuance* thereof, for the very *ſpring* and *originall* it ſelfe.

And I have lately ſeene, that from the eighth yeare of King *Henry* the ſeventh, ever ſince which time this *Court* hath reſted in the place called the *white-hall*; the *bookes* of the *acts* (or *Entries*) there have beene orderly digeſted and kept, in which you may reade the *handling* of the *cauſes*, not onely of *poore men*, and the *Kings ſervants*, but alſo of ſundry noble *Perſons*, *Abbots*, *Knights*, *Eſquires*, and other rich & wealthy *complainants*. Howbeit I doe well *remember*, that within theſe 40. *yeares*, the *bills* of *complaints preſented* there, did ordinarily carry the one, or the other of theſe two *ſuggeſtions*, namely, that the *Plaintiffe* was a very poore man, not able to *ſue* at the *Common Law*, or the Kings *ſervants*, ordinarily *attendant* upon his *perſon*, or in his *houſhold*. But becauſe *enlargement* of *juriſdiction* is not proper to *Court*

alone,

alone, but common to it with all the reſt, I will not now ſtand to object it, but haſten to an end.

The Maſters of the *Requeſts* are neither called by *Writ*, nor appointed by *Commiſſion*, nor created by *Patent* as other *Iudges* be; which argue the immediate *authority* of the *Prince* to bee exreciſed by them; but onely have *Letters Patent* for their *Fees* and *Sallarie*, and were wont to take the ſame *Oath*, which the *Councellors* of *eſtate* doe yet conceive.

The *Clarkeſhip* of this Court hath, as I ſaid, beyond all memory beene committed to a *Clarke* of the *Privie Seale*.

For Maſter *Richard Offley*, now *Clarke*, hath ſerved in that place ſixe and forty yeares, ſucceeding therein to his Vncle *Richard Turner*, who had ſpent threeſcore and ſixe yeares partly as ſervant, and

partly as Officer there. The ſame *Turner* had followed *Robert Sampſon*, the ſucceſſor of *Lacy*, both well knowne unto him, all which were in their times ioyntly both *Clarkes* of the *Privy Seale*, and of this Court alſo.

The *Attorneyes* were in my firſt knowledge of them, but two onely; and now are three, whoſe places are at the diſpoſition of the *Clarke*.

The uſuall Proceſſe is by *Privy Seale*, alias *Privie Seale*, *Attachment*, and *Writ* of *Rebellion*, if the contumacy of the Defendant doe ſo deſerve: In the reſt of the proceedings, the courſe is not much different from the order of the *Chancery*.

King

The Preſident and Councells.

KIng *Hen.* 8. eſtabliſhed one Court of *Preſident* and *Councell* in the *Marches* of *Wales*, and another like Court of *Preſident* and *Councell* in the North parts, both which be Courts of *Equitie* in the principall juriſdiction, although they doe withall, exerciſe other powers by vertue of other ſeverall *Commiſſions*, and doe accompany the ſame.

The Dutchy Court of Lancaſter.

THe Court of the *Dutchy* or *Countie Palatine* of *Lancaſter*, grew out of the grant of the ſame King *Ed.* 3 who firſt gave that *Dutchie* to his Sonne *Iohn* of *Gaunt*, and endowed it with ſuch Royall *rights* as the *Countie Palatine* of *Cheſter*

had. And foraſmuch as it was afterwards extincted in the perſon of *K. H.*4. by reaſon of the Vnion of it with the *Crowne* of the *Realme*, the ſame *K.* knowing himſelfe to be more rightfully *Duke* of *Lancaſter*, than *King* of *England*, determined to ſave his right in the *Dutchie*, whatſoever ſhould befall him in the poſſeſſion of the *Kingdome*. And therefore he ſeparated his *Dutchie* from the *Crowne*, and ſetled it ſo, in the naturall perſon of *himſelfe*, and his *heires*, as if he had beene no *K.* or politicke body at all: In which plight it continued during the Reignes of *K. H.*5. and *K. Hen.*6. that were his deſcendants.

But when *K. Ed.*4. had by recovery of the *Crowne*, continued the right of the Houſe of *Yorke*, he feared not to appropriate that *Dutchie* to the *Crowne* againe. And in this manner it came together with the

Crowne

Crowne to *K. H. 7.* who liking well of the policie of *K. E. 4.* by whose right also he obtained the *Kingdom*, made like ſeparation of the *Dutchie* as he had done before, and ſo left to his *poſteritie* which doe yet enjoy it.

The Court of Wards and Liveries.

THe Court of *wards* began in our memorie, about 32. yeare of the Raigne of *K. H.* 8. who alſo in the next yeare after added thereunto the office of the *Maſter* of the *Liveries*, and therewithall conjoyned their names, ordayning that it ſhould bee called the Court of *wards* and *Liveries*.

The Court of Augmentation.

THe ſame *King* likewiſe had erected one Court of the generall

tall Surveyors of his Lands, and one other of the *augmentations* and *revenues* of his *Crowne*, and a third Court of the *first fruits* and *tenths* of *Benefices*. But all these were afterwards dissolved, and by *Queene Mary* united to the Court of *Exchequer*.

The Wardens Court.

HOwsoever in the stormes of *open warre* and *hostilitie* between us and the *Scots*, our most *ancient enemies*; the *subjects* on either side have gone to wracke, and the *Lawes* have beene silent, while the Drum and Trumpet were heard to sound, yet in every calme, and upon everie truce, or peace taken and concluded, both Humanitie, Reason, and Custome have afforded mutuall, and reciprocall deliverie of *Law*, and *Iustice* to the one subject against

gainſt the other : without the which, truce were not onely no truce at all, but the continuance of a daily,& moſt dangerous lying in wait, which would bring with it a greater evill and miſchiefe, then *warre* it ſelfe.

And therfore to the end that the conditions of the *peace* agreed upon, might be inviolably obſerved for the time, and that,both reſtitution for *harmes*, and puniſhments upon *harme doers*, might be made, and executed with all indifferencie: Certaine Courts have of long time beene *maintained* by the *Wardens*, or *Keepers* of the *Marches*,and *Limitative* grounds, that doe border upon either of the ſaid *Kingdomes*, the which are open to all that will complaine of any *Offence*, *tending* to the *violation* of that *Common peace* of both the *Nations*.

And albeit that is very *probable*, that

that the ſame begun with the firſt truce taken betweene us, and the *Scots*, (ſeeing that without it, or ſome ſuch mean, the Articles of the *truce* could not well bee maintained): yet foraſmuch as the bounds betweene us and the *Scots*, were not conſtant nor ſetled, but verie moveable and uncertaine, (even as either ſide did for the time winne, or loſe upon the other,) untill that both the Townes of *Carlile* and *Barwick* (being meeteſt to command at either end) were without *change*, reduced to our hands and poſſeſſion.

Edmund Comes Arundel, fuit cuſtos Marchiæ Scotiæ 6. E. 2. pillis exitus.

I ſuppoſe, that theſe Courts were planted about the time of King *Edw.* 2. or the 3. and ſo taking root from thence by little and little, to have growne to that ſtayed order and authoritie which now they doe enjoy. They on our part, be at this day in number 3. whereof one hath ſprung up ſince the time

time of *K. H. 6.* who in a *Statute* (made in the 31. yeare of his reign, for redreſſe of *Indictments* taken there) reciteth onely the two *courts* of the *Eaſt* and *weſt Marches*, uſing no words at al of the *Middle March*, which is now of the like credit with them.

The ſame *Statute* alſo boundeth the *Iuriſdiction* of theſe Courts, not to extend beyond the *Shires* of *Weſtmerland*, *Cumberland*, and *Northumberland*, and the Towne of *Newcaſtle* upon the River of *Tyne*.

What manner of proceeding they uſe, I do not throughly know, neither is it greatly pertinent to this preſent labour, and therefore leaving the ſearch thereof to ſuch as ſhall bee deſirous to underſtand the ſame, I will proceede as I have begun.

The

The Parliament.

BVt now the *Eccleſiaſticall* Courts being numbred, and theſe meer *Lay-Courts* thus handled, it reſteth, that I adjoyn the *Parliament*, which is mixed of both theſe natures, as having the *Biſhops* in reſpect of their *Baronies*, and not of their *Churches*, joyned with the *Lay-Lords* to make up the ſecond *eſtate* thereof. The firſt *eſtate* conſiſting of the *Prince* alone, and the third of the *Commonaltie*, without any of the *Clergie* at all.

Beſides the which, it is ſummoned to deviſe *Lawes*, both *Eccleſiaſticall*, *Civill*, *Criminall*, and *Martiall*, it miniſtreth the matter whereupon all the reſt of the Courts do worke, and it hath in ſome caſes, an ordinarie *Iuriſdiction* alſo.

That which wee (now agreeing with

with the *Scots*) doe name a *Parliament*, the *Frenchmen* doe call *Les Eſtates*, or *Aſſembly des Eſtates*, becauſe with them there, as with us alſo, the *Eſtates* of the *Land* doe meete thereat, to *conſult*; and the ſame in *Germany*, is termed a *Dyet*, for theſe other Courts that carry the name of *Parliament* in *France*, be but ordinarie Courts of *Iuſtice*, which as *Paulus Iouius* writeth, are thought to have bin planted there by us. And of which our owne *Councells* (eſtabliſhed in *Wales*, and in the *North-parts*) doe beare the neereſt ſhew, and reſemblance.

The word Parliament.

THe word *Parliament* (ſaith one) is compounded of *Parium* and *Lamentum*, becauſe (as he thinketh) the *Peeres* of the *Countrie* did at theſe meetings *lament* and *complain*

each

each to other of the enormities of their *Countrey*, and thereupon provided redreſſe for the ſame.

But their opinion is more probable, as I thinke, which derive *Parliament* ſimply from the *French word Parler*, and that alſo from the *Greeke* word παραλαλειν, both ſignifying to *ſpeake*, and ſo by adding the *termination Ment*, which is common in the *French tongue* as well to *nounes* as *adverbs*, doe make up *Parliament*, meaning thereby an *aſſembly* of *men* called together, to *ſpeake* or *conferre* their advices, or opinions. And ſo alſo it may not unfitly bee called *Parliament*, for that each man there doth, or ſhould *Parler la ment*, ſpeak his *mind*: But *Laurence Valla* miſ-liketh that manner of *Etymologie*, and therefore I will not ſtand upon it.

I dare not take upon me to ſet downe the very time in which the *word Parliament* came firſt in uſe;

but

but foraſmuch as it was *tranſported* out of *France*, it is not *unprobable* to *gueſſe*, that it began here ſhortly after the *time* of the *Norman Conqueſt*.

One of the firſt *authenticall* reports of that name *Parliament*, that I have found, is in the *Statute* made the 3. of *Edw.* 1. and commonly called *weſtminſter* the *firſt*; where, that *Aſſemblie* is ſaid to be, *Le Primer Parliament generall apres Coronement le Roy*. But yet that is not the very firſt uſe of the word; for in the *Statute* called *Articuli Cleri*, and publiſhed the 9. of *Edw.* 2. theſe words are read amongſt others; *Temporibus progenitorum noſtrorum quondam Regum Angliæ in diverſis Parliamentis ſuis, &c.* Which words, *progenitorum* and *quondam*, muſt needs reach higher than to *Edward* the firſt, that was but father to him that ſpake it. So that I can willingly herein *ſubſcribe* to the *opinion* of *Polydore Virgil*,

who in the 11. Booke of his *Engliſh Hiſtorie*, which containeth the reigne of K. *Henry* the firſt, that was ſonne to the *Conquerour*, writing of the great Aſſembly at *Salisburie*, ſaith thus; *At illud oppoſite habeo dicere, Reges ante hæc tempora non conſueviſſe populi conventum conſultandi cauſa (niſi perraro) facere, adeo ut ab Henrico id inſtitutum Iure manaſſe dici poſſit, &c.* And a little after, *More Gallico vulgo Parliamentum appellant, &c.* And this is ſo much the more credible, as that King laboured by all meanes, and eſpecially by the reſtitution of the ancient *Lawes*, (as all *Hiſtorians* doe agree) to heale the hearts of the *Engliſhmen*, which were before deepely wounded by the *oppreſſion* of his Father, and Brother *William*; to the end, that he might thereby the better keepe the Crowne of this Realme againſt the elder Brother *Robert*, who had both colour of good

right,

right, and had mooved his claime thereto.

But at what time ſoever, after the *Conqueſt*, this Court began to be called by the name of *Parliament*; this is certaine, that was before knowne to the *Saxons*, or *Engliſhmen*: ſometimes, by the word *Synoth*, and *Micle*; *Synoth*, of the *Greeke* συνόδος, now appropriated to the *Eccleſiaſticall Meetings* onely: And ſometimes by theſe tearmes, *Micel-Gemot*, *Witena-Gemot*, & *Ealrawitena-Gemot*; that is to ſay, the *great Meeting*, the *Meeting of the Wiſe-men*, or, the *Meeting of all the Wiſe-men*: For *Witen* ſignifieth *wiſe-men*; *Ealra*, *all*; and *Gemot*, a *Meeting*: of which laſt word, the names of *Shire-moote*, and *Folke-moote*, and *Haly-moote*; that is to ſay, the *Aſſembly*, or *Meeting* of the *men* of the *Shire*, of the *men* of a *Towne*, and of the *Tenants* of a *Hall*, or *Mannour*, had their beginnings

alſo. And as *Synoth* is more uſed in the *Acts* of *Parliaments* themſelves, ſo *Gemot* is more familiar to the *Hiſtorians*.

Thus much as well of the *preſent*, as of the *ancient* uſuall *Name*: Now let us looke into the thing it ſelfe.

The conformitie and reaſon of the three Eſtates in Parliament.

LIke as in *warre*, where the *King* is preſent in Perſon; and with him, the *Nobilitie*, *Gentrie*, and *Yeomanrie*; there is the *force* and *puiſſance* of the *Realme*: Even ſo in *Peace*, whereſoever the *Prince* is, as the *Head*, to give *life*, (that is to ſay) to yeeld the higheſt and laſt *aſſent*; And where the *Baronie*, conſiſting of the *Lords Spirituall*, and *Temporall*; and the *Comminaltie*, made up of the *Knights*, and *Burgeſſes*, be as the *Bodie*,

preſent

preſent at his *Call*, to the end, to *deliberate*, *conferre*, and *conclude*; there is alſo the *Councell*, and *Policie* of the *Realme*: So that, for as much as every man, from the higheſt to the loweſt, is there either in perſon, or by procuration; therefore of right *reaſon*, every man is ſaid to be bound by that which doth paſſe from ſuch an *Aſſembly*. And this frame of *Policie* is both *naturall*, and *harmonicall*: *Naturall*, in that it hath an imitation of the naturall bodie of man, truly called a *little World*; out of the three *Cells* whereof, namely, the *Head*, *Breaſt*, and *Belly*, the whole three *powers* of the *Soule* doe open, and utter themſelves: and *Harmonicall*, becauſe from ſuch, and ſo well-tuned a *Baſe*, *Meane*, and *Treble*, there proceedeth a moſt exquiſite *conſent*, and delicious *melodie*.

The beginning of the Parliament.

THe beginning of which manner of *Conſultation*, and namely with us of this Realme, I ſee not how I can derive it from any other time, than from that, in which the *German* or *Engliſh* did ſet their firſt foot on this *Land*, to invade it. For *Cornelius Tacitus* writing of the manners of the ancient *Germans*, ſayth thus: *Nec Regibus infinita poteſtas, de minoribus rebus Principes conſultant, de majoribus omnes.*

The Continuance of the Parliament, till the Conqueſt.

NEither did they, together with the change of the Soile, make change of this wonted manner of deliberation: For it is yet extant, in *Monuments* left behind them, that after

after their comming hither, they frequented the ſame order in counſailing, which they had uſed in their owne Countrey before.

For proofe whereof, I might call *Beda*, the *Saxon* Hiſtoriographer, to witneſſe: who reporting how the *Chriſtian Faith* tooke root by little and little among them, in their particular Kingdomes within this *Land*, writeth, That King *Edwin* of *Northumberland*, would not embrace the Preaching of the *Goſpel*, before that he had communed and conſulted with his *Friends*, his *Nobilitie*, and his *wiſe-men*; and that *Sigebert*, the King of the *Eaſt Saxons*, being likewiſe moved to be *baptized*, did firſt call a *Councell* of his *Subjects*; and finding them all to favour the *motion*, did then himſelfe alſo aſſent unto it.

But becauſe the *Synods* or *Parliaments* themſelves be moſt faithfull

witneſſes of their owne doings; and for that alſo the *Kingdome* of the *Weſt Saxons* prevailing over the reſt, and melting (as it were) all their Crownes, to make one for her ſelfe, did in the end become *Miſtris* or *Monarch* of the whole *Heptarchie*, or ſeven *Kingdomes*, into which this *Land* was before divided: I will, for a while, leave *Hiſtorians*, and come to the *Synods*; firſt ſhewing, by one or two *examples*, what *perſons* were wont to be preſent at the *Parliaments* of that *Kingdome*; and then confirming the like to have been uſed, after ſuch time as the whole *Land* was reduced to one entire *Eſtate* and *Monarchie*.

Ina, the King of the *Weſt Saxons*, who began his Reigne about the yeare after the *Incarnation* of our *Lord Chriſt*, 712. began his *Parliament* thus: *Ego Inas beneficio Dei Occiduorum Saxonum Rex, &c.* I Ina, by Gods gift, King of the Weſt Saxons,

Saxons, **with the advice & teaching of** Genred **my Father,** Hedde **my Bishop,** Ercenwald **my Bishop, and with all my** Aldermen, **and the eldest** Wise men **of my people and also a great** Assembly **of Gods servants, was carefull concerning the health of our Soules, and establishment of our Kingdome, &c.**

Mid eallum minum Ealdormannum & tham yldestam minre theod.

Now let us see if the three *Estates* of *Parliament* (that is to say) the *Nobilitie,* and *Commons,* may be found here. First, the K. *Name* is expressly added; the *Nobilitie,* is signified under these **Bishops and Aldermen:** for before the *divisions* of the *Realms* into *Shires,* every large *territorie* had an *Alderman,* or *Governour*; who was, after the *allotment* into *Shires,* for the most part, an *Earle:* in token whereof, almost all our *Earles,* to this day, doe beare the *name* of one *Shire,* or other. The *Comminaltie,* is partly included in

The necessitie of the 3. Estates in the making of *Lawes.* One Example.

in the words; **The eldest wisemen of my people,** which betokeneth the *Laitie*, and partly in the words, **A great assembly of Gods Servants,** which doe notifie the *Clergie*, called so then, as it may appeare by the very first *Chapter* of the same *Lawes*, for that they were consecrated to *Gods service*.

And lest that any man should think that these *Estates* were called together more for their *advice* and *counsell* to be given to the *King*, than for any *authority* or *interest* they had in making the *Law*: First, the *Preamble* calleth those *Lawes*, **Our Doomes or Judgements**; and the *Purview* saith, **Wee bid or command** in the plurall number, which also may not be restrained to the King alone, for *honours sake*, as we now use to speake; for he is there named, **I Ina** in the singular number onely.

Thus

Thus much I note, once for all, that I be not hereafter troubled to repeat the ſame things againe.

About one hundred yeeres after the death of this *Ina*, one *Alfred*, a King, not of the *weſt-Saxons* onely (as he calleth himſelfe) but rather both of the *Engliſhmen* and *Saxons* (as *Aſſerius* ſaith, that wrote his *life*) did (as he telleth) in his *Preface* to his *Lawes*, gather together and put in writing certain ordinances made by *Wiſe men* in ſundry *Synods* of ſundrie former Kings, as namely *Ina* before-ſaid, *Offa* the King of *Middle England*, and *Ethelbert* of *Kent*, the firſt *Chriſtned Prince* of all the *Saxon Nation*; which Collection of *Lawes* he alſo ſaith, that he ſhewed to all his own *wiſe men*, and they likewiſe thought them meet to bee obſerved.

Ego Alfredus occidentalium Saxonum Rex, prudentiſſimorum è noſtris conſilio uſus ſum, atq; in iis omnibus placuit edici eorum obſervationem.

But what maketh it to the three *Eſtates*, will ſome men ſay, that theſe

theſe Kings and their *Wiſe men*, which may well ſeeme to bee but their *privie Counſellors*, did eſtabliſh *Lawes*? Yes, very much; for here the word *Witena*, *Wiſe-men*, doth include the *Nobilitie* and *Commons*, becauſe they be *Counſellors* of the Realme, (for the time) in reſpect whereof the aſſembling of them, was of ſome called *Wytena Gemote*, *a meeting of the Wiſe-men*, (as I told you) and of other ſome it is termed *Commune Concilium Regni*, the *Common Councell* of the *Realme*.

And that this muſt be ſo underſtood in this place, I will uſe none other Argument than the teſtimonie of *Alfred* himſelfe drawn out of the ſame place: for he ſaith (as you have heard) **That the** Lawes **of K.** Ina **were made by a** Synod **of** wiſe men, and what thoſe *wiſe-men* were, you have alſo underſtood, by the *report* of K. *Ina* himſelf, in the ſtyle of his

own *Lawes* (that is to ſay) by the *Nobility* & *Comminalty* beſides the *King*.

Furthermore, that I loſe not another *advantage* offered me by this *authoritie*, I muſt alſo gather thereby, that not onely the *Kingdomes* of *Northumberland*, *Eaſtſex*, and *VVeſtſex*, uſed the three eſtates in making their *Lawes*, but alſo that they of *Kent*, and *Middle England*, maintained the very ſame *order*: For King *Alfreds* words (as you ſee) be one and the ſame for them all, and then conſequently their manner was one and the ſame through all. Another Example.

But now, that I may at the length leave theſe *Heptarchies*, or *petty Kings* and paſſe to the *Monarchs* and *Great ones*, the ſame *Alfred* (after that the whole *Nations* had *yeelded* unto *him*, and were *ſhrouded* under his *protection* againſt the *furious ſtormes* of the *Daniſh Invaſion*) did at one time conclude a *peace* with *Guthrum*, the K. of the

the *Danes*, the Style whereof beginneth thus, **This is the** Peace **which K.** Alfred **and** Guthrum, **and all the** Wiſe men **of the** Engliſh Nation **have taken, &c.** Loe here you ſee *Ealra wytena Gemote*, An Aſſemblie of all the *wiſe men*.

After him *Edward* called his *wiſe men* to *Exceſter*, and conſulted with them for the better obſervation of the *peace* of his owne *Realme*. And he alſo at another time, by the advice of the *wiſe men*, renued and confirmd the *League* that *Alfred* had taken before with the *Daniſh Captain*.

King *Athelſtan* concludeth his famous *Parliament* holden at *Gratlie*, thus; **All this was ordained in that great** Synode **at** Gratlie, **at which was the** Arch-Biſhop, Wolſhelme, **with all the** Noble men **and** Wiſe men **that K.** Ethelſtane **gathered together.**

Cum eo optimates & ſapientes ab Athelſtano evocati, &c.

And the ſame King did alſo afterwards

terwards call another *Aſſembly* of his *wiſe men* to *Exceſter*, to *conſult* for the better *execution* of theſe former *Ordinances*.

Edmond the King ſummoned a great *Synode* at *London*, both of the *order* of the *Spiritualtie*, and of the *Temporaltie*, the which in the ſecond part of the *Law* there made, he calleth by one generall name his *Witena*, *Wiſe-men*, and thanketh them for their helpe in that adviſe.

After him King *Edgar* publiſhed certaine *Lawes*, which were made (as he ſaith) by the *Counſell* of his *Wiſe-men*.

The like Title and concluſion have thoſe *Statutes* alſo which King *Etheldred* ordained at *woodſtocke*, and the *League* which hee tooke at *Anlaf*, and others (the *Captaines* of the *Daniſh Armie*) is intituled to be made by him and all his wiſe-men. And certaine other *Articles* there

Ealles angelcynnes witan, Fœdus Alfredi.

there be, though hitherto not imprinted, of a *Parliament* that was assembled in the yeere after *Christ*, 1008. which fell under the Reigne of the same King, which are there reported to have passed under the *authoritie* of the King, and his *Wise-men*, both *Spirituall* and *Lay*, in which said last ordinances, this one thing for this purpose, is worthy the observation. That whereas in the beginning of the *Lawes*, all the *Acts* are said to passe from the King, and his *Wise-men* both of the *Clergie* and *Laitie*; in all the *body* and *processe* of the *Law* each *Statute* saith thus, **And it is the advice** of our Lord, and his *Wise men*. So as it seemeth plainly that it was then a received forme of speech, to signifie both the *Spiritualty* and *Laitie* (that is to say) the *Nobilitie* and *Commons* by the onely word *Witena*, or *Wise-men*.

Finally,

Finally, thoſe *Lawes* of the great *King*, and *Monarch*, *Canute*, or *Knowt*, which he made at *Winchester*, and be yet remaining, doe beare *face*, and *teſtimonie*, that they were made by *him*, and his *Wiſe-men*.

Mid his witena getbeahi gered.

And there is an ancient written Treatiſe (entituled, *Modus tenendi Parliamentum tempore Regis Edwardi filii Ethelredi*) to be ſeene in many hands, purporting the very *order*, *forme*, and *manner* of all this ſtately *Court*, and *ſolemne Aſſemblie*.

Now as theſe written *authorities*, do undoubtedly confirme our *aſſertion* of this *continuance* of this manner of *Parliament*: So is there alſo unwritten *Law*, or *Preſcription*, that doth no leſſe infallibly uphold the ſame.

For it is well knowne, that in every quarter of the Realme, a great many of *Burroughs* doe yet ſend *Burgeſſes* to the *Parliament*, which

is nevertheleſſe ſo ancient, and ſo long ſince decayed, and gone to nought, that it cannot be ſhewed that they have bin of any *reputation*, at any time ſince the *Conqueſt*, and much leſſe that they have obtained the *priviledge*, by the Grant of any King ſucceeding the ſame: So that the *intereſt* which they have in *Parliament*, groweth by an ancient uſage before the *Conqueſt*, whereof they cannot ſhew any beginning; which thing is alſo confirmed by a contrary uſage in the ſelfe-ſame thing; for it is likewiſe knowne, that they of ancient *Demeaſne* doe preſcribe, in not ſending to the *Parliament*; for which reaſon alſo, they are neither *Contributers* to the *Wages* of the *Knights* there, neither are they bound by ſundrie *Acts* of *Parliament*, though the ſame be generally penned, and doe make no exception of them.

But

But there is no *ancient Demeaſne*, (ſaving that onely which is deſcribed in the *Booke* of *Doomeſ-day*, under the *Title* of *Terra Regis*) which of *neceſſitie* muſt be ſuch, as eyther was in the *hands* of the *Conquerour* himſelfe, who made the *Booke*, or of *Edward* the *Confeſſor*, that was before him.

And ſo againe, if they of *ancient Demeaſnes*, have ever ſince the *Conqueſt*, preſcribed not to ſend *Burgeſſes* to the *Parliament*; then (no doubt) there was a *Parliament* before the *Conqueſt*, to the which they of *other places* did ſend their *Burgeſſes*: Which ſeeing it is ſo, let us come yet neerer, and *examine*, whether the ſame *Order* hath alſo beene continued ever ſince that time, or no.

The continuance of the Parliament after the Conqueſt.

TO looke for a *Parliament* aſſembled of the *Engliſh Nobilitie*, and *Commons*, ſoone after the *Conqueſt*, were but to *labour*, without expectation of *good ſpeed*; for, *Silent Leges inter arma*: And during all the reigne of the *Conquerour*, eyther the *Sword* was not put up into the *Scabbard*; or, if it were, the *Hand* was alwayes upon the *Hilt*, readie to draw it: So unwilling, on the one part, were the *Engliſhmen* to beare the *Yoake*, that rather their *Obedience* was to bee *compelled*, than their *Opinions* to bee *conſulted*: and ſo haughtie, on the other part, were the *Norman Victorers*, that to bee called an *Engliſhman*, was, in their eye, a great *contumelie*, and *reproach*.

His

His Sonne *William* alſo, did rather pretend in *words* ſome releaſe of the former *auſteritie* in *Government*, than performe it in *deed*, and *experience*: But his other Sonne (the firſt *Henry* that ever reigned here) did not onely at his *Coronation* promiſe *reſtitution* of St. *Edwards Lawes*, as wee call them; but alſo delivered out his free *charter* of the *Grant* of the ſame: in which, as *Matthew Paris* reporteth, hee acknowledgeth, that hee was *Crowned* by the *Common Councell* of the *Barons* of the *Realme* of *England*.

And here it may happily ſeeme ſtrange to affirme, that this was a full *Parliament*, in which there is no other mention, but of the *Barons* onely. But if it bee conſidered; firſt, That the *Germans* expound, and render the word *Baro*, by *Freihers*, a *Free-man*; then, that *Matthew Paris* ſaith, That the Ci-

tizens of *London* were at that time called *Barons*; and alſo, that even yet both the *Burgeſſes* of the *five Ports* doe paſſe under the ſame *Name*, and that everie man (almoſt) hath his *Court Baron*: It ſhall not altogether bee without ground, to ſay, that both the *Nobilitie* and *Comminaltie* of the *Realme* were meant under theſe words, *The Barons of the Realme*; the rather, becauſe that *ſpeech* is accompanied with the words, *Common Councell*; by the which, all our ancient *writs*, that bee grounded upon old *Statutes*, doe ſignifie the *Parliament*: And for that alſo, the ſelfe-ſame *Authour* doth afterwards uſe the words, *Communis aſſenſus Baronagii*, when he intendeth to ſignifie a juſt *Parliament*.

Howbeit, ſince I labour not with any penurie of *proofe*, I will relinquiſh the advantage of this matter;

ter; desiring onely that may bee called to memory, which *Polidore Virgil* hath before acknowledged, concerning the restitution of the forme of *Parliament*, made by the same King, of whom also the *Saxon Chronicles* of *Peterborough Abbey* doe testifie, That in the yeere after *Christ*, 1123. he sent his *writs* over all *England*, and bad his *Bishops*, *Abbots*, and all his *Theins* (which signifieth as much as *Baron* before) that they should come to his *Wytena Gemote* on *Candlemas* day at *Glocester*.

But to leave him, and to leape over *Stephen* (because hee strived longer for the *Crowne*, than hee enjoyed it) King *Henry* 2. saith *Mathew Paris*, in the yeere of our *Lord Christ*, 1185. *Convocavit Clerum Regni, & populum cum omni Nobilitate apud fontem Clericorum.* *Clarkenwell.*

And yet againe, to passe over his

ſonne *Richard*, that ſpent the moſt part of his Reigne in *battell* abroad; and to come to his ſonne *Iohn*, that paſſed a great part of his time in *Civill warres* at home; you may finde in the *Tower*, *Inter Volumina Recordorum Cancellariæ de Patentibus Anno 6. Regis Iohannis in dorſo*, this *Writ*; *Rex, &c. Vic. Rotland, &c. Sciatis quod proviſum eſt cum aſſenſu Archiepiſcoporum, Comitum, Baronum, & omnium fidelium noſtrorum Angliæ, quod novem milites per totam Angliam inveniant decimum militem bene paratum equis & armis, ad defenſionem Regni noſtri, & quod illi novem milites invenient decimo militi quolibet die duos ſolidos ad liberationem ſuam, &c.*

I read moreover in the ſame *Mathew Paris*, That King *Henry* the 3. did, *Anno Dom.* 1225. call together *Omnes Clericos, & Laicos totius Regni*, which *Aſſemblie* the ſame *Writer* in

in ſome places expreſſeth by the words *Vniverſitas Regni*.

But what need I to hang long upon the *credit* of *Hiſtorians*, ſeeing that from this time downeward the *Authenticke Records* of the *Parliaments* themſelves doe offer me preſent helpe.

The great *Charter* of *England*, which paſſed from this King about this time, and for which the *Engliſh men* had no leſſe ſtriven, than the *Trojans* for their *Helena*; beareth no ſhew of an *Act* of *Parliament*: and yet I will prove, by the depoſitions of two ſundrie *Parliaments*, that it was made by the common conſent of all the Realme, in the time of K. *Henry* 3. for ſo ſaith the *Statute*, called, *Confirmatio Chartæ*, *Anno* 25. *Edward* 1. in flat termes; and the *Statute* made at *Weſtminſter*, *Anno* 15. *Edward*. 3. *cap.* 1. ſaith, That it was made by the *King*,

Magna Charta Parliament, Charter in Parliamẽt.

Stat. 15. *Ed.* 3. *cap.* 1. *Confirmeles* 2. *Char. & autres Stat. fi. per le Roy, Peers, & Com.*

King, Peeres, and *Commons* of this *Land.*

In the 20. yeere of the ſame King *Henry*, the *Statute* of *Merton* was publiſhed, which ſaith thus; *Proviſum fuit, & conceſſum tam à prædictis Archiepiſcopis, Epiſcopis, Comitibus, Baronibus, quàm ab ipſo rege, & aliis.*

In the 25. yeere of his reigne alſo was the *Statute* of *Marlebridge*, made *Providente* (as it ſelfe ſpeaketh) *ipſo domino rege ac convocatis diſcretioribus ejuſdem Regni. Regni tam majoribus quam minoribus proviſum eſt Statutum, &c.*

The *Statute* of *Weſtm.* the 1. which was made in the 3. yeere of K. *Ed.* 1. hath this *title*: **The eſtabliſhmẽts of K.** Ed. **made by his** Councell, **and by the aſſent of his** Arch-Biſhops, Biſhops, Abbots, Priors, Earles, Barons, **and all the** Comminalty **of the** Land **thither ſummoned,**

The

The *Statute* made at *Glocester* in the ſixth yeere of the ſame Kings Reigne, is there ſaid to be made thus; *Purvenant le Roy & appelles le plus diſcretes de ſon Royalme auxibien des grandres come des meinders ſtabilie eſt, & concordantment ordonne.*

To draw to an end, King *Edw.* 2. held a *Parliament* in the 14. yeere of his reigne, wherein are theſe words, *Le Roy per aſſent des prelates, Contes, Barones, & touts le comminalty de ſon Royalme, en le Parliament, &c.* And the like ſpeech hath he in another *Statute* that hee made, *Ne quis occaſionetur pro morte* Petri *de* Gaveſtone.

I doe not think that I ſhall need to ſeeke for further *proofes* amongſt the *Records* of *Parliaments* after this time; for they doe from henceforth not onely ſhew themſelves in ſuch *ſtore* and *plenty*, but doe alſo ſet forth the ſeverall *eſtates* themſelves, the

the *duty* of their *preſence*, the *paines* of their *default* or *departure*, and ſundry other *circumſtances* ſo particularly and plainely, as I might well be *charged* if I would ſtand upon them in a *matter* not *doubtfull*, to have uſed *ſpeech* nothing needfull.

And yet leſt any man ſhould ſuſpect, that any of the two lower *eſtates* of this *Aſſemblie*, derived his *voyce* in *Parliament* from the *authoritie* of theſe latter *Lawes*, I muſt leave him to underſtand, that in one ſhort *Statute* of *Parliament*, holden in the firſt yeere of K. *Richard* 2. *Statute* 2. *c.* 4. he may read it foure ſeverall times plainely ſpoken, and this was done anciently, and of old time. So that here againe alſo, *preſcription* is ready to ſerve the *turne*; and to ſay the *truth*, this *one Law* may *ſtand* for an *interpreter* of all the reſt: for whether they be ſaid to be made by the King and his *Barons*; or by the

the *King*, and his *Clergie* and *Laitie*; or by the *King*, and his *Diſcreter*, men both great and ſmall; or by the *common conſent* or *Councell* of the *Realme*, as I have alreadie ſhewed; or by the *King*, and his *Wiſe men*; or by the *King*, and his *Councell*; or his *Common Councell*, or by the *King*, his *Earles*, *Barons*, and other *Wiſe men*; or after ſuch other like *phraſes*, whereof you meet with many, in the *Volumes* of *Parliaments*: It commeth all to this one *point*; namely, **That the** King, **his** Nobilitie, **and** Commons, **did ordaine and enact the ſame.** And which is more, if you ſhall finde any *Acts* of *Parliament*, ſeeming to paſſe under the *Name* and *Authoritie* of the *King* onely, as there be ſome that have that ſhew indeed; yet you muſt not by and by *judge*, that it was eſtabliſhed without the *aſſent* of the other *Eſtates*.

To

To take one example for the reſt: The *Statute* of *Glouceſter*, made the 6. of *Edw.* 1. ſpeaketh thus: **Our Soveraigne Lord the King, for the amendment of the** Land, **hath provided theſe** Statutes, **underwritten.** But yet the *Statute* made at *Weſtminſter*, the 13. yeere of that King, *cap.* 18. and the *Statute* of *Quo warranto*, ſet forth in the 30. yeare of the ſame King, alſo reciting that *Statute* of *Glocester*, doe plainely acknowledge the one; **and it was provided by the more diſcreet men of the** Realme, **as well of the high, as of the low degree, being called together**; and the other, that it was **made by the** King, **calling together the** Earles, Prelates, Barons, **and his** Councell. And therefore it is well noted by *Iudge Brooke*; *And though* Magna Charta, *and ſundrie other old* Statutes, *doe run in the* Name *of the* Prince *onely, yet the*

other

other two Eſtates *are ſupplied, in all good underſtanding.*

Againe, whether the *forme* of an *Act* be thus; **The** King, **with the** aſſent **of the** Lords & Commons, **eſtabliſheth**; or thus, **It is** enacted **by the requeſt of the** Lords & Commons, **whereto the** K. aſſenteth; or thus, **By the** aſſent **of the** King, & **of the** Lords Spirituall & Temporall, & **of the** Cõmons, **it is** enacted; or thus, **It is** enacted **by the** authoritie **of this preſent** Parliament: It is alſo *one* in *effect*, & *ſubſtance*; for the words *aſſenteth* and *enacteth*, be *equivalent* in this *caſe*, as it is holden, 7. *H.* 7. 14. & 11. *H.* 7. 25. Whereas otherwiſe, the *neceſſitie* of the *aſſent* of all the three *Eſtates* in *Parliament* is ſuch, as without any *one* of them, the *reſt* doe but loſe their labour. For that fell out upon a time, that the K. in *Parliament* willed, that a certaine man ſhould be *attainted*, and ſhould loſe his *lands*; where-

whereunto the Lords *assented:* But because there was nothing spoken of the *Commons* agreement, it was adjudged by all the *Iustices*, 4.*H.*7. 18. That this was no *Act* that might *binde*; and therefore the *partie* was *restored.*

Hitherto of the *continuance* and *consent* of this our *chiefe* and *highest Court*; whereunto, after I shall have added a word or twaine of the *Iurisdiction* thereof, I will make an end.

If all the *Iudgements*, as *Cicero* said, be *conversant*, either in the *punishment* of *offences*, or in the *decision* of *Controversies*; then is the *judgement* of our *Parliament* of as ample *Authoritie*, as the *Sentence* of any, or all other *Courts* whatsoever: for it delivereth *Lawes*, that doe *binde* all *persons*, in all *causes*, as well *Ecclesiasti-*

call,

call, as *Temporall*, whereof you may ſee a great many of *examples* in the *volume* of the old *Saxons Parliaments*; how ſtrange a thing ſoever our *Popiſh Clergie* of latter times have thought that to be.

It hath alſo *juriſdiction* in ſuch *caſes* which have need of *helpe*, and for which there is no *helpe* by any *Law*, already in *force*; And whereas the erronious *Iudgements* of any other *Courts* muſt be *reverſed* by a *higher authority*; this *Court* doth not onely *reverſe* the *errors* of the *Kings Bench*, which is *ſuperiour* to all the *other*; but it may alſo *amend* the *errors* committed in the *Parliament* it ſelfe, if any ſuch ſhall at any time appeare.

Thus have I runne along our *Courts* of all *kindes*, and have ſaid (as I was able) ſeverally of theſe *Lay*, and mixed *Courts* of *Records*, deriving them from the *Crowne*,

their *originall*, and drawing them by one and one (as it were ſo many *Roſes*) from the *Garland* of the *Prince*; leaving nevertheleſſe the *Garland* it ſelf *undeſpoyled* of that her *Soveraign vertue*, in the *adminiſtration* of *Iuſtice*: or as *Bracton* ſaith well; *Rex habet ordinariam Iuriſdictionem, & omnia jura in manu ſua, quæ nec ita Delegari poſſunt, quin ordinaria remaneant cum ipſo rege.* And therefore whatſoever *power* is by him committed over unto *other men*, the ſame nevertheleſſe remaineth ſtill in *himſelfe*, in ſo much as he may take knowledge of all *Cauſes*, unleſſe they bee *Felonie*, *Treaſon*, or ſuch other; wherein, becauſe he is a *party*, hee cannot *perſonally* ſit in *Iudgement*, but muſt performe it by his *Delegates*.

And this *ſupreme juriſdiction* reſerved (as I told you out of *Britton*) to the *King himſelfe*, is either altogether

together *ſilent*, or elſe it ſpeaketh at the *Board* of his *Privie Councell*; the which is ſo *incorporate* to him, as that it is ſaid to ſpeake with his owne *mouth*, and that but *rarely*, for ſuch *reaſon*, as you have ſeen before.

Now therefore, as *God* is highly to be thanked, that theſe *Flowers* of *Iuſtice* are thus *delivered forth*, and *Diſperſed abroad*: So is *hee* alſo heartily to bee prayed unto, that thoſe which *occupie* the *place* of *Iuſtice* by them, may ſo behave themſelves as it may appeare, that they doe not *exerciſe* the *Iudgements* of *man*, but of *God himſelfe*, the *chiefe Iuſtice* of the *world*; for ſo ſhall the good be *ſuccoured*, and the *evill ſuppreſſed*, ſo ſhall the *Iudges* themſelves be well *acquitted*, ſo ſhall her *Majeſtie* be duely *ſerved*, and *God himſelfe* honoured aright.

MVSEVM BRITANNICVM

It

IT had beene fit, I know, to have added hereunto, as an Appendix, the beginning of the Houſes of Law commonly termed, for that they did flow out of the Courts, the Houſes, or Innes of Court, and alſo to have annexed a Catalogue, or Table of the names of all the Chancellours, Iuſtices, and Iudges themſelves: But becauſe there is not, ſo farre as I can yet learne, any certaine Monument of the one, and for that it requireth a great ſearch of Records, whereunto I have no acceſſe, to performe the other: I muſt leave them both to ſuch as can, and will better travaile in that behalfe.

FINIS.

FH
MVSEVM
BRITANNICVM